



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAIROBI
CAUSE NO. 213 OF 2015
BANKING INSURANCE & FINANCE UNION (KENYA)...CLAIMANT
VERSUS
CO-OPERATIVE BANK OF KENYA LIMITED.....RESPONDENT

M/s Mwika for the respondent - Applicant

Mr. Mwaura Ngage for claimant

RULING

1. The applicant filed a notice of appeal on 16th November 2016 against the judgment of Justice Nderi Nduma delivered on 9th November 2016.
2. The applicant seeks stay of execution of the judgment, pending the hearing and determination of intended appeal on grounds that;
 - a. The application has been made promptly and without unreasonable delay
 - b. The decretal sum of Kshs.1,273,480.50 with costs and interest is substantial and the grievant being a natural person of unknown arrears may be unable to refund the same if paid and appeal was successful.
 - c. That the payment would render the appeal nugatory and occasion substantial loss to the appellant.
 - d. The respondent is a commercial bank and is able to pay the sums ordered should the appeal fail.
 - e. The court may make such orders as to security provision as it deems fit and may order deposit in an interest bearing account in the joint names of the advocate for the claimant and that of the respondent.
3. The application is opposed by Mr. Mwaura Ngage for the claimant on the grounds that the applicant does not state in the notice of motion filed on 14th November 2016, that the court erred in law or fact or at all.
4. That the applicant does not also allege that the compensation granted to the claimant was excessive.

5. That mere filing of a notice of appeal does not lead to automatic stay of execution but the intended appellant must demonstrate that the intended appeal is arguable which is not the case in the present matter.

6. That the applicant has not led any evidence to show that the grievant is a person of straw who would be unable to refund the decretal sum should the appeal succeed.

7. That the application is merely meant to delay the enjoyment of the fruits of judgment by the grievant.

8. That it is in the interest of fairness and justice that the court dismiss the application with costs.

Determination

9. The court has considered the submissions by the parties and is of the considered view that the respondent did not make any attempt to show that it has an arguable appeal in the notice of motion and the supporting affidavit.

10. That notwithstanding, the court recognises the applicant's right of appeal and would not stand on its way.

11. In the circumstances and in the interest of equity and justice, the court makes the following orders;

(a) The court makes an order for stay of execution of the judgment dated and delivered on 9th November 2016, on condition that the respondent pays 50% of the decretal amount within 14 days of this ruling.

(b) 50% of the decretal sum be placed in an interest earning joint account in the name of the grievant and the advocate for the respondent within 14 days of this ruling.

(c) In the event the applicant does not comply with orders (a) and (b) above, the stay orders shall automatically lapse and execution to follow.

Dated and delivered at Nairobi this 21st Day of April 2017

MATHEWS NDERI NDUMA

PRINCIPAL JUDGE