



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
CAUSE NO. 84 OF 2014

ERIC MAMISI SIFUMA **1ST CLAIMANT**
SAMUEL NJUGUNA MWANGI **2ND CLAIMANT**
PETER IMBAYI **3RD CLAIMANT**

V
GUAVA RESTAURANT **RESPONDENT**

RULING NO. 2

1. This is the second attempt by the Respondent to invalidate execution of the Court's judgment delivered on 13 November 2015.
2. The first attempt was dismissed through the Court's ruling of 28 October 2016. The Respondent filed a Notice of Appeal against the ruling on 22 November 2016.
3. A day earlier, the Respondent filed a motion seeking
 1. ...
 2. THAT this Honourable Court do issue leave to the Applicant to file Notice of Appeal out of time.
 3. THAT this Honourable Court do issue stay of execution of decree dated 13th November, 2015 and any other consequential orders pending the hearing and determination of this Application.
 4. *THAT this Honourable Court do issue stay of execution of Decree dated 13th November, 2015 and any other consequential orders pending the hearing and determination of this Appeal.*
 5. THAT the annexed Notice of Appeal be deemed to be properly on record and duly filed.
 6. THAT the costs of the application be provided for.
4. The 1st Claimant filed a replying affidavit in opposition to the Respondent's motion on 7 December 2016 and the motion was taken on 27 February 2017.
5. Mr. Maina who urged the Respondent's motion informed the Court that he wished to abandon prayers 2 and 5 as proposed in the motion.

6. Because the motion has been urged *inter partes*, proposed order 3 has been overtaken by events and the only substantive prayer is proposed order 4.

7. The grounds cited by the Respondent for seeking stay of execution pending appeal are that the intended appeal is arguable with probability of success, that the delay in bringing the application was not inordinate and if inordinate was occasioned by an oversight and that the Claimants would not be prejudiced.

8. The judgment sought to be appealed against was rendered on 13 November 2015 and in terms of the applicable rule, a Notice of Appeal should have been filed on or before 12 December 2015.

9. From the record, there is no indication that a Notice of Appeal against the judgment/decreed was lodged with the Court. In fact, what was presented before Court was a preliminary objection dated 2 April 2016, which objection the Court delivered a ruling on 28 October 2016.

10. The objection was filed only after the Claimants had moved to execute the decree (Respondent filed a Notice of Appeal against the ruling).

11. The Respondent having abandoned proposed orders 2 and 5 which sought leave to file a Notice of Appeal out of time and deeming the annexed Notice of Appeal as having been duly filed and served, there is nothing left for the Court to determine

12. The Court notes that the supporting affidavit to the instant motion seeks to appeal against the judgment delivered on 13 November 2015, which judgment was delivered more than a year earlier and which delay is merely explained as being due to an oversight and that the purported motion is brought under an entity alleged not to exist).

13. In other words, there would be no purpose for the Court to grant stay of execution pending appeal, for which Notice of Appeal was not filed within the requisite time, and for which prayer for leave has been abandoned.

14. It is also not lost to the Court, based on the multiple applications and conduct of the Respondent, that it may be driven more by a desire to delay the Claimants, lay persons acting for themselves from enjoying the fruits of the judgment.

15. The proposed prayer 4 is therefore incompetent within the circumstances presented before Court and the Court orders that the motion dated 21 November 2016 be dismissed with costs to the Claimants.

16. With the order, the Claimants are at liberty to proceed with execution.

Delivered, dated and signed in Nakuru on this 10th day of April 2017.

Radido Stephen

Judge

Appearances

Claimants in person

For Respondent Mr. Maina instructed by Ikua Mwangi & Co. Advocates

Court Assistant Nixon