

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NYERI

CAUSE NO.45 OF 2015

KENYA PLANTATION & AGRICULTURAL WORKERS UNION.....CLAIMANT

VERSUS

GREYSTONE FARM LIMITED.....RESPONDENT

(FORMERLY EQUITORIAL NUT LIMITED)

(Before Hon. Justice Byram Ongaya on Friday 12th May, 2017)

RULING

The court delivered the judgment in the case on 04.11.2016. Judgment was entered for the claimant against the respondent and a money decree followed per the decree issued on 11.11.2016. The respondent, the applicant, lodged a notice of appeal on 15.11.2016. On 15.12.2016 the applicant filed a notice of motion under Order 42 Rule 6 of the Civil Procedure Rules and section 3A of the Civil Procedure Act and all enabling laws. The substantive prayer is that there be stay of execution of the decree flowing from the judgment delivered on 04.11.2016 pending the lodging, hearing and determination of the applicant's intended appeal. The main ground in support of the application is that if the judgment sum is paid out as per the judgment and the intended appeal is successful, then, the judgment sum so paid out may not be reclaimed.

Mr. Khisa for the claimant submitted that the stay of execution pending appeal could be allowed subject to depositing the decretal sum in an interest earning account opened in the names of the applicant's advocates and the claimant union. The typed proceedings in the matter are ready on file for purposes of processing and filing the record of appeal.

In the circumstances, the application by the notice of motion dated 09.12.2016 and filed on 15.12.2016 is hereby determined with orders:

- a. There be stay of execution of the decree herein pending the hearing and determination of the intended appeal but upon the conditions –
 - i. the applicant to deposit by 01.07.2017 the full decretal sum in an interest earning account opened in the joint names of the claimant union and the applicant's advocates; and
 - ii. the record of appeal to be filed by 01.07.2017.
- b. In default of order (a) above, execution to issue.
- c. The costs of the application to abide the outcome of the intended appeal or following default under order (b) above, to be paid by the applicant.

Signed, dated and delivered in court at Nyeri this Friday, 12th May, 2017.

BYRAM ONGAYA

JUDGE