



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CIVIL APPEAL NO 17 OF 2016

SASINI TEA & COFFEE LIMITED.....APPELLANT

VERSUS

JANE MUTHONI MWAURA.....RESPONDENT

RULING

1. This ruling was triggered by the Appellant's application brought by Notice of Motion under certificate of urgency dated 6th December 2016 seeking an order for stay of proceedings in ***Kiambu CMCC No 31 of 2015: Jane Muthoni Mwaura v Sasini Tea & Coffee Limited*** pending the hearing and determination of the Appellant's appeal before this Court.
2. In spite of adequate opportunity granted to the Respondent, she did not respond to the Appellant's application.
3. The application which is supported by the affidavit of the Appellant's Legal Officer, Philemon Kiplagat Sabulei sworn on 21st November 2016 is based on the following grounds:
 - a. That the cause of action in ***Kiambu CMCC No 31 of 2015: Jane Muthoni Mwaura v Sasini Tea & Coffee Limited*** is premised on a contract of employment and is alleged to have arisen on 24th June 2006. The Respondent filed her suit on 20th February 2015, a period of over 8 years after accrual of the cause of action;
 - b. That after the Lower Court granted the Respondent leave on 26th November 2014 to file suit out of time within 60 days, the Respondent did not comply with the orders but proceeded to file her suit long after the 60 days;
 - c. That the Appellant filed a formal application seeking to strike out the suit on the ground that it was statute barred;
 - d. That the Lower Court delivered a ruling on 29th June 2016, dismissing the Appellant's application;
 - e. That the Appellant has filed an appeal against the ruling of the Lower Court;
 - f. That unless the proceedings in the Lower Court are stayed, the appeal will be rendered nugatory.
4. In the written submissions filed on behalf of the Appellant on 17th February 2017, reference was made to the decision by **Githua J** in ***Kenya Power & Lighting Company Limited v Esther Wanjiru Wokabi***

[2014] eKLR where the learned Judge cited with approval an earlier decision by **Ringera J** (as he then was) in **Global Travel & Travels Limited (Nairobi HC Winding Up Cause No 43 of 2000)** as follows:

“As I understand the law, whether or not to grant a stay of proceedings or further proceedings on a decree or order appealed from is a matter of judicial discretion to be exercised in the interest of justice....the sole question is whether it is in the interest of justice to order a stay of proceedings and if it is, on what terms it should be granted. In deciding whether to order a stay, the court should essentially weigh the pros and cons of granting or not granting the order. And in considering those matters, it should bear in mind such factors as the need for expeditious disposal of cases, the prima facie merits of the intended appeal, in the sense of not whether it will probably succeed or not but whether it is an arguable one, the scarcity and optimum utilization of judicial time and whether the application has been brought expeditiously.”

5. I am persuaded that this remains the law applicable in the matter now before me. The Appellant's contention is that the Lower Court had no jurisdiction to extend time for filing of the suit. This is a clear point of law that merits consideration by this Court sitting as an appellate court. I must add that jurisdiction goes to the very core of the power of the Court to determine matters placed before it. Any decision rendered without jurisdiction would be a nullity.

6. This Court is therefore convinced that it is in the interest of justice to allow the Appellant's application. The proceedings in **Kiambu CMCC No 31 of 2015: Jane Muthoni Mwaura v Sasini Tea & Coffee Limited** are hereby stayed pending the hearing and determination of the Appellant's appeal pending before this Court.

7. The costs of this application will be costs in the appeal.

8. It is so ordered.

DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 16TH DAY OF JUNE 2017

LINNET NDOLO

JUDGE

Appearance:

Mr. Njoroge for the Appellant

No appearance for the Respondent