



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE NO. 2132 OF 2011

JOSEPH MAINA GICHUHI.....CLAIMANT

VERSUS

BARCLAYS BANK OF KENYA LTD.....RESPONDENT

Mr Mayende for respondent/applicant

M/S Omolo for claimant/respondent

RULING

1. The application filed on 18th May 2017 and dated the even date seeks to set aside the orders by Ndolo J. dismissing the respondent's application dated 13th July 2016 made on 15th May 2017.
2. The order dismissed an application dated 19th July 2016 seeking stay of execution of judgment and decree of Nduma J. delivered on 10th June 2015 and the subsequent judgment on quantum delivered on 20th June 2016.
3. On 15th May 2017 the application was listed before Ndolo J. and counsel for the respondent/applicant did not attend. The application was dismissed.
4. Counsel for the respondent/applicant states that on the material day, he was before Nduma J. in conduct of **ELRC Cause No. 1915 of 2016 – Paul Mutisya Matheka Vs. Kenmet Limited** and **ELRC Cause 1917 of 2016, Peter Mwalika Mulingu Vs. Kenmet Limited** in which he held brief for Fatuma Mungori and Company Advocates who appear for the claimants.
5. That unbeknown to him, this matter was before Ndolo J. and proceeded in his absence.
6. It is not in dispute that the matter was listed before Ndolo J. on the material day and counsel for the respondent does not offer any cogent reason as to why he did not attend the hearing of the application.
7. The application is opposed vide a replying affidavit of Owino Opiyo, counsel for the claimant in which he deposes that; there has been inordinate delay in prosecuting the application for stay after the respondent obtained ex parte orders, which they sat on for about eleven (11) months leading to the claimant fixing the application for inter partes hearing themselves.
8. That the respondent/applicant seek to reinstate the application dated 19th July 2016 for stay pending appeal. That apart from the notice of appeal filed herein, there is no appeal filed more than one year after the pronouncement of Judgment, nor proceedings obtained for the same.

9. That there is no reason advanced by the respondent for the failure to file the intended appeal.
10. That if the application is granted, it will only occasion further prejudice on the claimant who has waited for so long to get the fruits of his Judgment.
11. That twice, the matter had earlier been listed before Ndolo J. on which two occasions, the respondent did not attend.
12. The cause list is made to guide all Advocates and the absence by the counsel for respondent is unjustifiable.
13. That there being no pending appeal, the application be dismissed with costs to the claimant.
14. The court relies on the Court of Appeal decision in;

Maureen Odero Vs. Kenya Pipeline Company Limited [2015]eKLR where the court referred to its earlier decision in Kali Security Company Limited Vs. Mureithi [2005]KLR 91. The court reiterated that Rule 81 (1) of the Court of Appeal Rules [now 82 (1)] requires that an appeal should be lodged within sixty (60) days of the date when a notice of appeal was lodged and the only exception to that Rule is where the period certified as having been necessary for preparation of the record is excluded from computation of time without the need to seek an order of the court. Rule 81 (2) and which is now Rule 82 (2) must however be complied with for the certificate of delay to be acceptable.

This is not the case in this matter. There is no pending Appeal therefore.

15. Furthermore, there has been inordinate delay in prosecuting this application which is prejudicial to the claimant in a manner amounting to denial of justice.
16. The application lacks merit, the same is dismissed with costs.

Dated and delivered at Nairobi this 28th day of July, 2017

MATHEWS NDERI NDUMA

PRINCIPAL JUDGE