



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU

CAUSE NO. 207 OF 2015

ERICKSON MATUNDA OMOYO.....CLAIMANT

v

GAJIPARA BUILDERS LIMITED.....RESPONDENT

RULING

1. For determination is an application by the Respondent dated 24 February 2017 seeking

1. ...(spent)

2. ...(spent)

3. THAT this Honourable Court be pleased to issue an Order of stay of execution of its own decision delivered on 20th JANUARY 2017 pending the hearing and determination of an appeal to the Court of Appeal against the entire decision.

4. THAT this Court be pleased to issue Orders on costs as it deems fit and appropriate.

2. On 1 March 2017, the Court granted interim stay of execution pending *inter partes* hearing of the application on condition that the decretal sum of Kshs 172,901/25 would be deposited into Court before 24 March 2017. The condition was complied with.

3. The application was urged on 29 March 2017.

4. The grounds/reasons advanced by the Respondent in support of its application are that the Claimant did not prove his case on a balance of probabilities; that unless stay is granted the Intended Appeal would be rendered nugatory; that the Claimant is not a person of means and therefore were the appeal to succeed, it would not be possible to recover the decretal amount and substantial loss will occasioned; that the Respondent has moved without undue delay and that the justice of the case warrants grant of stay.

5. The Claimant, in a replying affidavit filed in Court on 29 March 2017 objected to the application and contended that the Respondent had not treated the Cause with the zeal it was handling the application for stay because, although filing a Memorandum of Appearance, it had failed to file a Response; that the Respondent was attempting to correct its failure to defend the Cause under the guise of an Appeal and that he had met the requisite standard of proof during the hearing of the Cause.

6. The Court has considered the material placed before it.

7. The Cause proceeded as an undefended Cause because the Respondent did not file a Response. It only filed a Memorandum of Appearance.

8. The record also shows that the Respondent's advocate on record was notified of the mention date for scheduling a hearing date, but the advocates never bothered to attend Court (the Court scheduled the hearing date after satisfying itself that the Respondent had been served and acknowledged service on 18 November 2015).

9. The Respondent has not remotely attempted to explain the failure to file a Response or the lack of representation/appearance during the mention when hearing date was scheduled.

10. Considering the failures, and that the orders sought by the Respondent are discretionary, the Court declines to exercise its discretionary by allowing the motion.

11. The Court orders that

(i) The motion be dismissed.

(ii) unless a stay is otherwise granted by the Court of Appeal within 10 days, the decretal sum deposited into Court be released immediately thereafter to the Claimant and/or his advocate on record.

12. Claimant to have costs of the application.

Delivered, dated and signed in Nakuru on this 14th day of July 2017.

Radido Stephen

Judge

Appearances

For Claimant Ms. Chepngetich instructed by Munene Chege & Co. Advocates

For Respondent Ms. Muthoni instructed by Karanja-Mbugua & Co. Advocates

Court Assistant Nixon