



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

PETITION NO 67 OF 2015

NANCY MACNALLY.....PETITIONER

VERSUS

INTERNATIONAL CENTRE OF INSECT PHYSIOLOGY

AND ECOLOGY (ICIPE).....RESPONDENT

RULING

1. On 20th December 2016 I overruled a preliminary objection raised by the Respondent and on 16th February 2017 I gave directions towards disposal of the main petition as follows:

- a) The Respondent to respond to the petition by 6th March 2017;
- b) The Petitioner to file submissions on the petition by 27th March 2017;
- c) The Respondent to file submissions on the petition by 18th April 2017;
- d) The Petition to be heard on 2nd May 2017.

2. On 2nd May 2017, Counsel for the Respondent notified the Court of an application for stay of proceedings pending appeal against the ruling of the Court overruling the preliminary objection. It is this application that is the subject of this ruling.

3. The application is brought by Notice of Motion dated 28th April 2017 and filed in Court on even date. It is supported by the affidavit of the Respondent's Chief Legal Officer, Caroline Oyula and is premised on the following grounds:

- a) The Respondent has lodged an appeal against the ruling delivered by this Court on 20th December 2016;
- b) The substratum of the appeal materially and directly affects the hearing of the petition.

4. In her replying affidavit sworn on 8th May 2017, the Petitioner states that she will be prejudiced by stay of proceedings as sought by the Respondent. She states that there has been unreasonable delay in filing the application which has not been explained.

5. The Petitioner further states that the Respondent has not demonstrated the loss it would suffer should

the petition proceed to hearing. The Petitioner takes the view that the application is meant to frustrate the hearing of the petition and to exhaust her financially.

6. The single issue for determination in this application is whether the Respondent has made out a case for stay of proceedings pending appeal. **Ringera J** (as he then was) considered this question in ***The Matter of Global Tours Travels Limited (Nairobi HC Winding Up Cause No 430 of 2000)*** and stated 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 will essentially weigh the pros and cons of granting or not granting the order. And in 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.”

7. The ruling from which the Respondent seeks to appeal was delivered on 20th December 2016 and a notice of appeal filed promptly on the same day. The Respondent appears to have gone to sleep until 28th April 2017 when the current application was filed. Instructively, this was the last working day before the hearing of the petition on 2nd May 2017 and its filing meant that the petition could not proceed as scheduled.

8. The Respondent chose not to record any explanation for this delay either in the application or the supporting affidavit and the Court was unconvinced by submission from the bar that the matter in issue was complex.

9. The Court considers the delay unreasonable in the circumstances and on this ground alone, declines to stay proceedings before it.

10. The result is that Respondent’s application dated 28th April 2017 is dismissed with costs to the Petitioner.

11. Orders accordingly.

DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 14TH DAY OF JULY 2017

LINNET NDOLO

JUDGE

Appearance:

Mr. Ndolo for the Petitioner

Mr. Owino for the Respondent