



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAIROBI
CAUSE NO. 1251 OF 2014
BANKING INSURANCE AND
FINANCE UNION (KENYA).....CLAIMANT
VERSUS
BARCLAYS BANK OF KENYA LIMITED.....RESPONDENT

M/S Oyombe for respondent/applicant

Mr. Tom Odera for claimant/respondent

RULING

1. In its notice of motion application filed on 24th November 2016, the respondent/applicant seeks an order for stay of execution of the Judgment and decree delivered on 13th April 2016.

2. The application is based on the grounds set out on the face of the application that may be summarized as follows;

That the applicant has lodged a notice of appeal against the whole of the said decision as per Rule 75 of the court of Appeal Rules and has requested for typed copies of the proceedings in the trial court for purpose of appeal.

That claimant has commenced execution proceedings by instructing auctioneers to proclaim, attach and sell respondent's movable property worth Kshs. 3,015,725.

That the applicant has an arguable appeal with high chances of success and draft memorandum of appeal is attached.

That applicant will be unable to refund the decretal sum if paid and thus render the appeal nugatory.

3. The application is opposed vide a replying affidavit of the 1st National Deputy General Secretary of the claimant union.

4. That the notice of appeal was filed on 18th April 2016 and since then no appeal has been filed to date.

5. That on 31st October 2016 240 days after Judgment was delivered, the claimant commenced execution

proceedings hence this application which was filed on 24th November 2016.

6. That the draft memorandum of appeal, presents no arguable appeal. That no memorandum of appeal was filed within the sixty (60) days contemplated by the rules of Court of Appeal and in terms of Rule 83 of the Court of Appeal Rules which reads as follows;-

“if a party who has lodged a notice of appeal fails to institute an appeal within the appointed time, he shall be deemed to have withdrawn his notice of appeal and the court may on its own motion or on the application of any party make such orders.”

7. The Decision of the Court of Appeal in the case of;

Maureen Odera Vs. Kenya Pipeline Company Limited [2015] eKLR where the court referred to its earlier decision in Kali Security Company 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 ledged 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, is instructive on this matter.

8. There being no appeal, there cannot be any basis to grant stay of execution.

9. That there are no averments by the applicant that it has sought any extension of time within which to file an appeal.

10. That it is in the interest of justice that the claimant be allowed to enjoy the fruits of Judgment.

11. That this application has been visited by inordinate delay and is an abuse of court process.

Determination

12. Upon considering all the circumstances of the case set out herein before, there being no appeal filed within sixty (60) days of noting the notice of appeal, and there being no evidence that extension of time has been sought and granted, there is no basis to grant a stay of execution.

13. Furthermore, the application is visited by inordinate delay and is tantamount to abuse of court process.

14. The application is dismissed with costs.

Dated and Signed at Nairobi this 18th day of August, 2017.

MATHEWS NDERI NDUMA

PRINCIPAL JUDGE

Dated, Delivered and Signed at Nairobi this 18th day of August, 2017.

JORAM NELSON ABUODHA

JUDGE

Delivered in the presence of:

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