



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAIROBI
CAUSE NO. 1488 OF 2010

RAHAB WOTHAYA ESIROMO

JOSEPH KAMAU RUOYA

SIMON MAINA CHEGE

LABAN MWANGI CHEGE

CLAIMANTS

DAVID MUIRU NJOROGE

MICHAEL GIKONYO KINYANJUI

NOBERT OMANYO WABWIRE

STEPHEN WAMBUGU WAWERU

VERSUS

BLUE SHIELD INSURANCE

COMPANY LIMITED1ST RESPONDENT

SHIELD ASSURANCE

COMPANY LIMITED 2ND RESPONDENT

STATUTORY MANAGER BLUE SHIELD

INSURANCE COMPANY LIMITED

(UNDER STATUTORY MANAGEMENT)..... 3RD RESPONDENT

M/S Wetende for applicant

Mr. Karimi for respondent

RULING

1. The notice of motion application dated 15th December 2016, seeks stay of execution of the Judgment of the Honourable Lady Justice Onyango delivered on 29th April 2013 on the grounds set out in the notice of motion to wit;

on 9th December 2016, the court dismissed the applicant's application seeking to stay execution of the Judgment of the Hon. Lady Justice Onyango J. on 29th April 2013 on the grounds *inter alia* that in the said Judgment, the applicant was not released from the Judgment debt in its entirety.

2. The applicant has filed a notice of appeal against the Ruling of the Honourable Mr. Justice Nderi Nduma delivered on 9th December 2016.

3. That, the Appeal is arguable, and if execution is effected, the intended Appeal will be rendered nugatory. That the applicant has no knowledge of any assets owned by the Judgment debtor and would be unable to recover the decretal sum.

4. The applicant posits that there was no order by the court requiring it to settle the decretal sum and that the same was wrongly issued as there was no Judgment against the applicant to merit any attachment of its property as alleged or at all.

5. In my ruling of 9th December 2016 in which the court declined to grant stay of execution of the Judgment of Lady Justice Maureen Onyango delivered on 29th April 2013, I made a finding of fact that my reading of the Judgment of Lady Justice Onyango did not absorb the 2nd respondent from paying the debt in question and on that basis declined to grant stay of execution.

6. The applicant wants a second bite on the cherry and by doing so, seeks the court to sit on appeal on its own ruling dated 9th December 2016.

7. The claimants have been waiting to enjoy the fruits of their Judgment since 29th April 2013 and in the court's view, the balance of justice tilts in favour of dismissing the application, there being no tangible explanation as to why there has been such inordinate delay in prosecuting the pending Appeal against the Judgment of Onyango J. delivered on 29th April 2013. This second application for stay borders on vexatious and abuse of court process.

8. Accordingly, 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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