



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAIROBI
CAUSE NO. 2535 OF 2012

(Before Hon. Justice Hellen S. Wasilwa on 1st September, 2017)

JAMES KIPCHIRCHIR SAMBU.....CLAIMANT

-VERSUS-

PATRIOTIC GUARDS LIMITED.....RESPONDENT

PATRIOTIC GROUP OF COMPANIES LIMITED.....OBJECTOR

RULING

1. The Application before Court is one dated 23/6/2017. The Application was filed under Certificate of Urgency by the Objector herein. The Application was filed through a Notice of Motion brought by the Objector Patriotic Group of Companies Limited under Order 16 of Industrial Court (Procedure) Rules 2016 and Order (13)(1) and (viii) of the Industrial Act and all other enabling provisions of the law seeking orders that:

- 1. This Application/Appeal be certified as extremely urgent and be heard on priority basis.***
- 2. That this Honourable Court be pleased to grant a stay of execution commenced by the Claimant in this case on 16th January 2017 pending hearing and final determination of this application or until further orders of this Honourable Court.***
- 3. The Honourable Court be pleased to grant stay of execution against the orders and ruling delivered on 22nd June, 2017 and all subsequent proceedings pending the hearing and determination of this application/appeal.***
- 4. Costs of this application/appeal be provided for.***

2. The application is grounded in the affidavit of Sammy Obuche the Objector's Operations Manager herein and on the following grounds:-

- 1. That the Objector/Applicant has filed a notice of appeal.***
- 2. That the Claimant is threatening to carry away the Objector's goods.***
- 3. That the Objector/Applicant has an arguable appeal and unless the application herein is***

allowed the appeal if successful will be rendered nugatory.

4. That the Objector/Applicant notes that in the ruling given the pay slips emanated from Patriotic Group Limited who is not the Objector. Secondly the Honourable Judge found that Motor vehicle KBG 976E and KBG 977E belong to Titus Kigen who is not the Objector herein. Thirdly the Honourable Court held that in the affidavit sworn on the 17th January, 2017 the proclaimed goods were said to belong to Patriotic Guards Limited but no list or schedule of the said goods were attached.

5. That the Objector/Applicant will suffer irreparable loss and gross injustice if the said orders are not obtained having preferred and filed its appeal.

6. That the Respondent/Claimant will not be prejudiced in anyway by the orders sought but the Objector/Applicant shall suffer irreparable loss if it's condemned without been given a chance to argue its appeal.

7. That it shall be in the interest of justice and fair play that the Honourable Court allows this application to enable the Objector/Applicant to expeditiously proceed and defend this matter to a fair conclusion.

3. It is noteworthy that on 30/1/2017 the same Objector Patriotic Group of Companies Limited filed another application as an Objector asking Court to allow his application and stop the attachment of certain goods which they deponed that belonged to them and not to the Respondent.

4. I rendered a ruling in the said application on 22.6.2017. In the said ruling I stated that Motor vehicle KBG 976E and KBG 977E belongs to Titus Kigen as per the documents presented to Court Appendix 4(a) and 4(b). I declined to stop the proclamation on that ground as the motor vehicles did not belong to the Objector.

5. The Objector Applicant now seeks orders for stay of execution against my ruling of 22.6.2017 pending an appeal they have filed.

6. This application is opposed by the Respondent Claimant herein. They filed their grounds of opposition dated 11.7.2017 and they aver that the appeal completely lacks merit and is founded on wrong principles and presumptions not supported by law and precedent. That there is no proved or shown substantial loss which the Respondent will suffer if stay is not granted.

7. I have examined the submissions of both parties. Order 42 rule 6 of the Civil Procedure Rules states as follows:

“6. (1) No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except in so far as the court appealed from may order but, the court appealed from may for sufficient cause order stay of execution of such decree or order, and whether the application for such stay shall have been granted or refused by the court appealed from, the court to which such appeal is preferred shall be at liberty, on application being made, to consider such application and to make such order thereon as may to it seem just, and any person aggrieved by an order of stay made by the court from whose decision the appeal is preferred may apply to the appellate court to have such order set aside.

(2) No order for stay of execution shall be made under subrule (1) unless:

(a) the court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay; and

(b) such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.

8. The above rules provide the 3 incidences under which an order of stay may be granted by Court. The 1st of these 3 is that the application has been made without unreasonable delay. Indeed the ruling in this Court was made on 22.6.2017 and this application filed on 23.6.2017. There was therefore no delay.

9. On issue of substantial loss, the Applicant has not established how they will suffer if the proclaimed goods are sold because this Court has determined that they do not belong to the Applicant Objector. That as it may be this is a subject of an appeal and I would not wish to delve further into the matter. On security, the Applicant has not offered any security to the Respondent.

10. I will therefore determine that, so that the appeal filed is not rendered nugatory, I will grant the order of stay pending appeal.

11. However, this is conditional on the Applicant Objector depositing the entire decretal amount in a joint interest earning account held in joint names of Counsel for Claimant and the Applicant within 30 days. In default execution to proceed.

12. Costs in the cause.

Read in open Court this **1st day of September, 2017.**

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Onyancha holding brief for Wathome for Claimant Applicant – Present

No appearance for the Respondent