



REPUBLIC OF KENYA
EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA

AT KERICHO

CAUSE NO. 108 OF 2016

(Before D. K. N. Marete)

REUBEN ASACHE.....CLAIMANT

VERSUS

EASTERN PRODUCE (K) LTD.....RESPONDENT

RULING

This is an application by way of Notice of Motion dated 19th April, 2017, seeking orders of court as follows;

- a) *That this application be certified as urgent.*
- b) *That service of this application be dispensed with in the first instance.*
- c) *That there be stay of execution of Decree in this suit pending the hearing and determination of an appeal against the judgement of this Honourable Court.*
- d) *That this honourable court be pleased to grant temporary stay orders pending the hearing and determination of this application inter-parties and/or further orders of the court.*
- e) *That such other orders be made as are just and expedient.*
- f) *Costs be in the cause.*

The application is grounded thus;

- i) *The Respondent has lodged Notice of Appeal against the judgement of the High Court delivered on 31st January, 2017.*
- ii) *This application has been brought expeditiously and without unreasonable delay.*
- iii) *The Respondent will be prejudiced improperly and further the said appeal which is against the entire decision of the High Court Judge will be rendered nugatory if stay of execution is not granted and the said appeal succeeds thereafter.*

iv) *The Respondent is willing to abide by such reasonable stay terms as the court may order in the interests of both parties and justice.*

v) *The Respondent's application is made in good faith.*

The Claimant/Respondent by a Replying Affidavit sworn on 10th May, 2017 opposes the application and prays that the same be dismissed with costs.

The Respondent/Applicant in her further affidavit dated sworn on 19th May, 2017 avers as follows;

7. **THAT** *the Respondents have now paid out the decretal sum of Kshs.235,000/= to the Claimant's and further Kshs.5,466/= as interest,*

annexed and marked LJK-1(a), (b), (c) and (d) being copies of cheques and correspondence.

8. **THAT** *the Respondent is keen to pursue appeal as per Notice of Appeal already lodged and that in the view of the payment this Honourable Court should treat the payment as sufficient security and allow the Respondent to proceed with the appeal by ordering that the Respondent merits to be granted orders of stay pending appeal accordingly.*

It is the Respondent/Applicant submissions that she has met all prerequisites of a case for stay of execution pending appeal as follows;

- This application is brought out expeditiously and without undue delay.
- Appeal will be rendered nugatory if stay is not granted.
- She has an arguable appeal and sufficient cause, and
- She has met the decretal sum with a view to obviating execution.

It is the Claimant/Respondent's case that this application is fatally defective, frivolous, vexatious, bad in law and an abuse of the court process. Further, the contents of the supporting affidavit thereof are marred by untruth and rhetoric and not supported by any form of evidence.

The Claimant/Respondent further avers that this application is part of an endless scheme and maneuver by the Respondent/Applicant to delay this matter through circumlocution. No appeal is so far filed on her part.

The Claimant/Respondent faults the response Notice of Appeal filed on 14th February, 2017 for being unsigned and undated and therefore irregular and untenable. There is no merited notice of appeal on record. Again, even if this was not the case, a Notice of Appeal is not an appeal and would not serve as one.

He also rubbishes the applicant's submissions on the appeal's chances of success or even being rendered nugatory in the event of success.

This is not a meritorial matter for allowing the application. The Respondent/Applicant submits that she has met the decretal amount. She has not adduced evidence of an appeal pending in the Court of Appeal. The application merely appears to be an attempt at forestalling any further proceedings in this cause.

What would grant of stay of execution pending appeal serve in the circumstances? Would this secure the decretal amount already paid out to the Claimant/Respondent? This sounds like an exercise in futility. It is not supported by law or fact. It borders on frivolity, vexation and an abuse of the process of court.

I am therefore inclined to dismiss the application with costs to the respondent.

Delivered, dated and signed this 17th day of October 2017.

D.K.Njagi Marete

JUDGE

Appearances

1. Mr. Sitienei instructed by Kibichiy & Company Advocates for the Respondent/Applicant.
2. Miss Soita instructed by Mwakio Kirwa & Company Advocates for the Claimant/Respondent.