



REPUBLIC OF KENYA
EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

PETITION NO. 30 OF 2014

KENYA COMMERCIAL FOOD AND

ALLIED WORKERS.....PETITIONER/APPLICANT

VERSUS

SALARIES AND REMUNERATION COMMISSION.....1ST RESPONDENT

HON. ATTORNEY GENERAL.....2ND RESPONDENT

NATIONAL SOCIAL SECURITY FUND.....3RD RESPONDENT

Mr. Kurauka for petitioner

Mr. Wakwaya for 1st respondent

M/s Chesina for 2nd respondent

RULING

1. Two applications, one dated 26th January 2016 and another dated 14th April 2016 are pending hearing and determination. The court was urged to consider both together. The application dated 26th January 2017 seeks to reinstate a contempt of court application dated 10th October 2016 which was dismissed for non-attendance on the 14th December 2016.

2. On 5th December 2016, the petitioner's advocate was personally present in court and confirmed that the 14th December 2016 was convenient to him for the hearing of his application. The court further directed that a representative of Salaries and Remuneration Commission (SRC) be present in court to show cause on this day. The counsel to the 1st respondent and SRC representative were present and counsel for the petitioner Mr. Kurauka failed to come to court without any explanation and the application was dismissed.

3. The explanation by the advocate for the petitioner that he failed to diarise the matter for the 14th December 2016 does not appear to the court to be a genuine mistake, the advocate having obtained the date personally in court and secured orders to summon high officials of SRC to show cause, why they ought not to be held in contempt of court for failure to pay the advocate, taxed costs.

4. Furthermore, the 1st respondent filed an application dated 14th April 2016, seeking *inter alia* interim order for stay of execution of the judgment of the court pending hearing and determination of the intended appeal.
5. There is in place interim orders pursuant to this application dated 14th April 2016, pending the hearing and determination of the application.
6. This development in court's view has obviated the potency of the initial application by the advocate for the petitioner and in the court's view, there is no sufficient justification to reinstate the same and the application dated 26th January 2017 is dismissed accordingly. This however does not preclude the applicant from being paid the taxed costs by the 1st respondent.
7. The real issue is whether the 1st respondent/applicant has satisfied the requirements for stay of execution pending the hearing and determination of the intended appeal.
8. In **Rubo Kimng'etich Arap Cheruiyot –vs– Peter Kiprop Rotich [2006] eKLR**, the court held that a stay of proceedings post judgment stays even the recovery of taxed costs.
9. It goes without saying therefore, if the court grants orders for stay of execution of the judgment and decree of the court, this will apply *mutatis mutandis* to the taxed costs.
10. The prerequisite for grant of an order for stay of execution of a judgment and decree of the court are as follows: -
- (i) Whether the intended appeal is arguable.
 - (ii) Whether the intended appeal could be rendered nugatory if stay is not granted.
 - (iii) Whether the application has been brought without inordinate delay.
 - (iv) Whether the applicant is ready and willing to provide security for the judgment sum.
11. These are the requirements under Rule 42 (6) of the Civil Procedure Rules, 2010.
12. The judgment was delivered on 28th August 2015. The application seeking stay of execution of the judgment pending appeal was filed on 21st April 2016 about eight (8) months from the date of the judgment. The notice of appeal was filed on 9th September 2015.
13. The judgment related to a circular dated 4th July 2012 and was in the nature of a declaration and not sounding in money.
14. There is no way the intended appeal could be rendered nugatory if the belated application for stay of execution pending appeal is not granted.
15. If the appeal is successful SRC would in future Collective Bargaining Agreement (CBA) negotiations between the claimant union and the interested party make its input before the CBA is concluded and registered with the court.
16. Accordingly both applications are dismissed and each party to bear their own costs of the applications.

Dated, Signed and Delivered on this 10th Day of November 2017

MATHEWS NDERI NDUMA

JUDGE