



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

(Before Hon. Justice Hellen S. Wasilwa on 7th November, 2017)

JAMES KIPCHIRCHIR SAMBU.....CLAIMANT

-VERSUS-

PATRIOTIC GUARDS LIMITED.....RESPONDENT

PATRIOTIC GROUP OF COMPANIES LIMITED.....OBJECTOR

RULING

1. The Application in Court is the one dated 14.9.2017. The application was filed under Certificate of Urgency and brought through a Notice of Motion filed under Section 3 of the Judicature Act and under Section 45 1(a) and (b) of the Civil Procedure Act and Rules and Section 3 and 3A and 1A of the Civil Procedure Act and Article 159 of the Constitution.

2. The Applicant seeks orders that:

1. This matter be certified as extremely urgent and heard on a priority basis during High Court Vacation.

2. That the Objector's goods that have been proclaimed are in danger to be disposed off.

3. That the Court be pleased to review its order made herein on 1st September, 2017 of stay of execution upon deposit of decretal sum in joint names of both counsels pending appeal to issuance of a bank guarantee.

4. That the period of stay of execution be extended.

3. The application is also supported by the supporting affidavit of Counsel for the Applicant Counsel Betty Rashid.

4. In the affidavit, Counsel has deponed that they seek stay of execution and that they seek that the Court substitutes the order made herein of deposit of decretal sum in a joint Account to one requiring the Objector to issue a bank guarantee. They aver that it is in the best interest of justice that orders sought be allowed.

5. The Respondent opposed this application and filed grounds of opposition indicating that this application is vexatious, frivolous and an abuse of Court process. They argue that the application lacks case merit and prayer which can be granted by Court. They aver that the application is founded on clearly wrong principles and presumption not supported by law and precedent.

6. The Claimant on their part have submitted that the application is not merited as it does not conform to Section 16 of Employment and Labour Relations Court Act and Rule 33 of the Courts Rules being an application for review. They aver that the Objector has not shown why they are unable to deposit the decretal sum. That no new evidence has been presented to persuade this Court to review its ruling.

7. I have examined all averments by both parties. The application by the Objector Applicant seeks a review of this Court's orders of 1.9.2017 where the Court ordered a stay on condition that the Objector deposits ½ the decretal sum in a joint interest earning Account held in joint names with the Decree Holder's Counsel.

8. The Objector wants this Court to review the order and instead provide that they provide a bank guarantee instead.

9. In view of the fact that the interest of the Court is to secure the Decretal sum for the Decree Holder pending appeal, provisions of a bank guarantee for the Decretal sum will be able to preserve the decree. However, that would cause a delay for the Decree Holder in realizing the fruit of his judgement wherein the Court has already made a determination on this since November 2015.

10. I will therefore order that ½ the decretal sum be released to the Decree Holder and the other ½ to be secured by way of bank guarantee as sought by the Objector Applicant. This should be within 15 days of this ruling. In default execution to proceed.

Read in open Court this 7th day of November, 2017.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Wathome for Claimant – Present

No appearance for the Respondent