



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF
KENYA AT NAIROBI
CAUSE NUMBER 1228 OF 2014

JOSIAH ARIKO OMUTOKO..... CLAIMANT

VERSUS

SECUREX AGENCIES (K) LIMITED.....RESPONDENT

RULING

1. By motion filed in the court on 23rd June 2017, the respondent sought stay of execution of the court's judgment pending the hearing and determination of the application. The applicant further sought the granting of any further or consequential orders as the court deemed just and expedient.

2. The application was based on the grounds that:-

(i) The following the judgment on 3rd february 2017 the applicant/respondent herein had instructed their advocates on record to institute negotiations with the claimant's advocate with the sole aim of exploring whether the parties could agree to a mutually reviewed decretal sum, outside the ambit of the said judgment.

(ii) That the parties kept discussing and sharing their respective positions mostly by telephone and there were good prospects that a settlement would be reached, notwithstanding the judgment.

(iii) That while these discussions and their positive prospect, were going on, the period for filing notice of appeal and memorandum of appeal lapsed inadvertently.

(iv) That it is only after the parties failed to agree that the claimant's advocates authorized auctioneers (Domicile Auctioneers) to serve warrants of attachment of the applicant's moveable property in execution of the decree on 21st June 2017.

(v) That the applicant's property is set to be removed on 28th June 2017, thereby causing them serious disruption to their operations.

(vi) That the applicant is prepared to deposit the decretal sum in court and as directed thereof.

3. The application as supported by the affidavit of Azim Tibjee sworn on 27th June 2017 in which he depones on the main that:-

(i) That on 3rd February 2017, this Honourable Court pronounced its judgment, following the

hearing of this claim.

(ii) That the said judgment was to have been delivered on notice to the parties herein.

(iii) That subsequently and after discussions, our client instructed us to initiate negotiation with the claimant's advocates herein with the sum of attempting a settlement of judgment.

4. The claimant opposed the application and filed a replying affidavit through the claimant who deponed on the main that:-

(i) That the award was delivered on 3rd February 2017 more than 5 months ago and no appeal has been preferred against the said award within the stipulated time or at all.

(ii) That on 6th February 2017, my advocates on record notified the applicants of entry of judgment.

(iii) That on 15th March 2017 my advocates on record filed and served upon the applicants a bill of costs

(iv) That on 5th May 2017, the bill of costs was taxed in the sum of Kshs.114,610/= and my advocates on record notified the applicants of the same.

(v) That from the date the case was filed and judgment delivered it took more than 3 years and that there has never been any formal settlement proposal from the applicants.

(vi) That I have never received any settlement proposal from the applicant in the more than 3 years the case has been in court.

5. Under Order 42 of the Civil Procedure Rules, no order of stay shall be made under sub rule 1 unless the court is satisfied that substantial loss may result to the applicant unless the order is made and that the application is made without unreasonable delay and further that 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.

6. The applicant herein claims that after the delivery of the court's judgment herein, the parties attempted to negotiate the decretal sum herein. These negotiations failed prompting the claimant to proceed with the process of execution of the decree herein.

7. The applicant has stated in the affidavit in support of the application that in the process of negotiation, time for filing the appeal lapsed. No application nor any prayer has been included in the present application for enlargement of time to file the appeal.

8. Further, the applicant does not seem to launch any attack on the judgment of the court which it tends to canvas on appeal.

9. The court also notes that the motion seeks stay of execution pending the hearing and determination of the application. The applicant further seeks that the court grants any further or other consequential order as the court deems just and necessary.

10. Prayer for stay of execution pending appeal is substantive prayer which an applicant must specifically pray in the face of the application. It cannot be hidden under the rubric of further or other consequential orders as the court deems fit. It is a substantive request showing the applicant's intention to appeal against the judgment of the court.

11. The court in this particular case is not sure what happens to the stay order after the hearing and determination of the present application.

12. In conclusion, the court finds the application to lack seriousness and without merit. The same is hereby dismissed with costs.

13. It is so ordered.

Dated at Nairobi this 8th day of December, 2017

Abuodha J. N.

Judge

Delivered this 8th day of December, 2017

In the presence of:-

.....for the claimant

.....for the Respondent

Abuodha J. N.

Judge