



**REPUBLIC OF KENYA**  
**EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA**

**AT KERICHO**

**CAUSE NO. 241 OF 2015**

***(Before D. K. N. Marete)***

**PAUL KOECH & 12 OTHERS .....RESPONDENTS**

**VERSUS**

**PURE CIRCLE (K) LIMITED.....APPLICANT**

**RULING**

This matter came to court vide a Notice of Motion dated 13th September, 2016 and seeks the following orders of court;

- 1. THAT** this application be certified as urgent and service of the same be dispensed with in the first instance.
- 2. THAT** this application be heard and stay of execution of the Consent Order recorded in court by counsel for the parties on 11<sup>th</sup> August, 2016 be granted ex-parte in the first instance pending inter-parties hearing and determination of this Application.
- 3. THAT** the honourable court be pleased to set aside the terms of the Consent Order recorded in court by counsel for the parties on 11<sup>th</sup> August, 2016 and freeze disbursement of funds stated in the said consent order to the respondents and/or their counsel pending the hearing and determination of the appeal preferred against the judgement herein.
- 4. THAT** the costs of this application be provided for.

It is grounded as follows;

- a) THAT** the applicant guaranteed the respondents to take loans from Ndege Chair Savings and Credit Co-operative Society.
- b) THAT** the respondents having been guaranteed by the respondent for the loans borrowed as aforementioned, have now refused, neglected and/or failed to repay the
- c) THAT** should the lender exercise the option of pursuing the guarantor (the applicant), then the applicant will suffer irreparable loss of having to shoulder the loan repayment after co pensating the applicants for termination.

**d) THAT** it is the respondents obligation to repay the loans that the applicant guaranteed them to borrow as a result of employer employee relationship.

**e) THAT** some and/or most of the respondents were actually paid their dues but concealed and/or failed disclose the material fact hence will end up benefitting unfairly to the applicant's detriment.

**f) THAT** the Respondents are at liberty and may proceed to execute the Consent Order recorded in court by counsel for the parties on 11<sup>th</sup> August 2016 at any time.

**g) THAT** in the premises it is only fair and just that there be stay of execution of the Consent Order recorded in court by counsel of the parties on 11<sup>th</sup> August, 2016 and the honourable court be pleased to freeze disbursement of funds stated in the said consent order to the respondents and/or their counsel pending the inter-parties hearing and determination of the instant application.

The respondents oppose the application on grounds *inter alia* that this court's orders of 11th August, 2016 were issued after hearing the applicant's application dated 28th July, 2016 *inter partes*. These are not consent orders as alluded by the applicant herein, or at all.

Again, this application is overtaken by events in that after hearing the claimant's/applicant's application dated 27th July, 2016, seeking release of the sum deposited in court was granted, these monies were thereon released and remitted to the claimants as awarded.

The claimant/respondent further aver that any issues arising out of a loan or loans with Ndege Chai Sacco Limited are utterly foreign and were not raised at trial and therefore cannot be brought in this late in the day.

The applicant in her written submission in support of the application for stay of execution of the orders of court cite and answers the prerequisites for an application for stay as follows;

*a) Whether substantial loss may result to the applicant unless the order is made.*

*b) Whether the application was filed expeditiously, and*

*c) Whether the applicant has established sufficient cause to the satisfaction of the court that it is in the interest of justice to grant the orders sought.*

She advances a positive approach to these issues and therefore enters a case for award of the application.

The claimant/respondent faults the application as a delay tactic intended to frustrate the claimants from enjoying the fruits of judgement. It is their further submission that issues involving co-operative disputes have their own and different resolution mechanism and not as is employed by the respondent/ applicant.

This application faults for the claimant/respondent. It would appear that it is grounded on the false premise of the orders complained of were in the first place consent orders. This is denied by the claimant/respondent. Again, as is submitted by the claimant/respondent, the issues raised have been overtaken by events. This is because the monies intended to be retained by the orders sought have been released and disbursed to the claimants. Any court orders at this moment would be in vain and an exercise in futility.

I am therefore inclined to dismiss the claim with costs to the claimants/respondents.

Delivered, dated and signed this 4th day of December, 2017.

**D.K.Njagi Marete**

**JUDGE**

## Appearances

1. Mr. Situma instructed by Mukite Musangi & Company Advocates for the respondent/applicant.
2. Mr. Maganga holding brief for Nyabena instructed by Nyabena Nyakundi & Company Advocates for the claimant/respondent.