



REPUBLIC OF KENYA
IN THE EMPLOYMENT & LABOUR RELATIONS COURT AT KISUMU

CAUSE NO. 2 OF 2014

(Before Hon. Lady Justice Maureen Onyango)

TIMON OTIENO MBOGA.....CLAIMANT

V

KENYA FOREST SERVICE.....RESPONDENT

RULING

By Notice of Motion filed under certificate of urgency on 16th June, 2015 the applicant Kenya Forestry Services who is the respondent in the main claim seeks the following orders:-

1. That the application be certified urgent and be heard ex-parte in the first instance.
2. That this Honourable Court be pleased to order a stay or execution of the Decree arising from the Judgement of the Honourable Lady Justice Maureen Onyango delivered on 5th June, 2015 pending the hearing of this application interpartes.
3. This Honourable Court be pleased to order a stay of the Decree arising from the Judgement of the Honourable Lady Justice Maureen Onyango delivered on 5th June, 2015 pending the hearing of and the determination of the intended Appeal against the said Judgement.
4. The Applicant be at liberty to apply for further orders and/or directions as this Honourable Court may deem just and expedient to grant
5. The Costs of and incidental to this application be costs in the cause.

The Application is supported by the affidavit of LAURA YEGO, Senior Legal officer of the applicant and on grounds on the face of the motion.

The Claimant (referred to as Respondent in the application) filed a replying affidavit opposing the application on grounds that the applicant does not deny that he is entitled to salary arrears of Shs. 1,800,232 which he seeks to be released to him. He further avers that there is no offer of security but never-the-less prays that decretal sum be deposited in a joint interest bearing account.

The Application was argued on 28th July, 2015. Mr. Ken Omolo appeared for the Applicant while Mr. Anyul appeared for the Claimants.

Mr. Omolo submitted that the applicant lodged a notice of appeal on 16th June, 2015 and the intended appeal had merit. He also submitted that the applicant had applied for certified copies of proceedings and

judgment to enable it prepare and file the record of appeal. He submitted that the appeal will be rendered nugatory if execution takes place. He further submitted that the applicant is ready to abide by any orders or conditions the court makes. He submitted that it is in the interest of justice that a stay of execution be granted.

Mr. Anyul for the Claimant opposed this application. He submitted that the issues raised in the replying affidavit have not been contested. He submitted that there is nothing to show that the applicant intends to pursue the appeal or that the conditions set out in Order 42 Rule 16(1) have been complied with. He submitted that the applicants has not made any mention of security and that a notice of appeal is not a guarantee of filing of an appeal.

Mr. Anyul submitted that the applicant has not disputed the request for release of the claimant's withheld salary which it should do and that the balance of the decretal sum should be deposited in an interest bearing account.

Determination

I have considered the application together with the grounds in support thereof and the supporting affidavit. I have also considered the Replying affidavit and the oral submission by counsel for the parties.

I agree with counsel for the applicant that the claimant does not appear to oppose the application but is only giving conditions being that the applicant deposits security, releases Shs. 1,800,232 being arrears of salary to the claimant and deposits the balance of Shs. 1,617,600 in a joint interest bearing account.

Appeal is a right of a party and unless there are good reasons, should not be denied to any party. In the present case the Claimant does appear to concede to the application subject to their demands being met.

For the foregoing reasons I have no reason to deny the applicant stay of execution pending appeal. I grant the said orders on the following conditions.

1. That the applicant deposits the entire decretal sum into a joint interest bearing account in the joint names of the Claimant's and Respondent's advocates within 30 days from the date of ruling.
2. That the appeal is filed within 60 days .
3. Costs of this application shall be costs in the Appeal.

Dated and signed and delivered this 21st day of January, 2016

MAUREEN ONYANGO

JUDGE