



REPUBLIC OF KENYA
IN THE EMPLOYMENT & LABOUR RELATIONS COURT AT KISUMU
CAUSE NO 312 OF 2013

(Before Hon. Lady Justice Maureen Onyango)

LYDIA CHEPKOSGEI MUTAI.....CLAIMANT

-VERSUS-

KENYA POWER & LIGHTING COMPANY LTDRESPONDENT

RULING

The application before me for determination is a Notice of Motion dated 16th November, 2015 filed under Certificate of Urgency on the same day. The Applicant who is the Claimant in the claim by the application made under Articles 159,162(2) of the Constitution, Section 12(3) (i) &(viii),17(1) and (2) of Industrial Court Act 2011, Rules 16 and 17 of Industrial Court (Procedure) Rules, Section 3A of Civil Procedure Act and all enabling provisions of the law.

The Applicant seeks the following orders:-

1. *That the Application be certified as urgent and heard ex-parte in the first instance.*
2. *That the Order of this court staying execution issued on 10th June, 2015 be vacated, set aside and or reviewed.*
3. *That the Deputy Registrar do proceed to tax the Claimants Bill of costs dated and filed on 19th January, 2015.*
4. *That the costs of this application be borne by the Respondent.*

The application is supported by the affidavit of **LYDIAH MUTAI** sworn on 16th November, 2016 and on the following grounds.

- i) *That the Respondent has not deposited the decretal sum in a joint account as ordered by the Court on 10th June, 2015 to date.*
- ii) *That the conditional stay has been breached and abused, by the Respondent.*
- iii) *That the Respondent has sought extension of time within to comply the conditional stay of 10th June, 2015.*
- iv) *That Court Orders must be obeyed for a party to enjoy the Courts protection.*

The Respondent opposed the application and filed a replying affidavit of **LORRAINE ADOLO OYOMBE** Counsel for the Respondent sworn on 24th November, 2015. The application was argued before me on 24th November, 2015.

The background of the application is that this court pronounced its judgment in this matter on 12th January, 2015 and awarded the Claimant Shs. 1,129,920 amongst other orders. The Respondent was dissatisfied with the judgment and filed a notice of appeal dated 22nd January, 2015. The Respondent also applied for certified copies of typed proceedings and judgment.

On 23rd February, 2015 the Respondent filed an application seeking stay of execution pending the hearing of its intended appeal. The application was heard and allowed vide a ruling dated 10th June, 2015. The ruling directed that the entire decretal sum of Shs. 1,129,920 be deposited into a joint interest earning account in the names of the Claimant's and Respondent's Counsels in a bank acceptable to both parties within 14 days.

The Claimant avers that on 9th July, 2015 the Respondent's counsel sent account opening forms from Co-operative Bank to the Claimant's counsel for execution. He executed the forms and sent them back to the Claimant's advocates together with copies of his identity card and passport photographs.

On 6th August, 2015 the Respondent's counsel sent fresh account opening forms from NIC Bank which the Claimant's counsel completed and returned on 11th August, 2015. On 14th August, 2015 the Respondent's counsel again sent the NIC Account opening forms to the Claimant's counsel for signature which he did and returned the forms to the Claimant's counsel duly signed on 18th August, 2015.

Again on 19th August, 2015 the Respondent's counsel sent fresh forms to the Claimant's counsel, this time with names of persons other than the Respondent's counsel's name, for signature. By then the Respondent was out of time and the Claimant applied for taxing of her bill of costs as there was no application for extension of time for making the deposit out of time. It is at this stage that the Claimant instructed her counsel to make this application.

The Respondent on the other hand explained through its counsel's replying affidavit and both written and oral submissions that being an employee of the Federation of Kenya Employers which is representing the Respondent in this suit, the Respondent prepared a cheque in the name of the Federation of Kenya Employers. This was on 24th July, 2015 after the Respondent's counsel had already sent account opening forms for Co-operative Bank. Since the Federation's bank account is in NIC Bank, the forms were for account opening at the said Bank. The money having been deposited in the Federation's Account, a new set of forms had to be executed authorising the withdrawal of the said money from the Federation's account so that it could be deposited in the joint interest earning account. The letter listed names of the Federation's authorised signatories which included the chairman, Executive Director and one Trustee/Board member of the Federation. It is this letter that irked the Claimant's counsel causing him to apply for taxation of the Claimant's bill of costs and to file the instant application.

Determination

I have considered the application and the affidavits and documents both in support and opposition of the same. I am satisfied that there is no mischief on the part of the Respondent in depositing the moneys as the delay was caused by formalities attendant to the fact that the counsel for the Respondent has no authority to open accounts on behalf of the Respondent or its clients and had to use the authorised signatories to first withdraw the decretal sum from the Federation's account where it had been deposited and to open the joint account into which the funds are to be deposited. This application was therefore filed as a consequence of a breakdown in communication between counsel for the Claimant and counsel for the Respondent, both of whom were acting in good faith in defence of the interests of their respective clients.

For the foregoing reasons I make the following orders:-

1. That the decretal sum be deposited in an interest earning account at NIC Bank in the joint names of the Federation of Kenya Employers and Kasamani & Company Advocates within 30 days.
2. That the costs of this application shall be paid by the Respondent.

Ruling dated, signed and delivered this 26th February, 2016.

MAUREEN ONYANGO

JUDGE