



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS
COURT OF KENYA AT NAIROBI
CAUSE NO. 221 OF 2010
PROFESSOR MUTUMA MUGAMBI.....CLAIMANT
VERSUS
KENYA METHODIST UNIVERSITY.....RESPONDENT
RULING

1. The notice of motion application dated 17th November 2015 seeks stay of execution of the award granted by Lady Justice Maureen Onyango on 26th August 2015 and delivered on 27th August 2015.

The application is supported by the affidavit of Kiriamiti sworn on 16th November 2015.

The application is opposed by a replying affidavit sworn by the claimant on 30th November 2015.

2. The issue for determination is whether the respondent is entitled to the stay of execution pending appeal. A notice of appeal was filed on 2nd September 2015. The respondent was ordered to pay the claimant Kshs.23,495,500.00.
3. The applicant must demonstrate;
 - a. substantial loss may result to the applicant unless the order is made;
 - b. the application has been made without unnecessary delay; and
 - c. the applicant has furnished security for the due performance of the decree being appealed from.
4. It was held by the **Court of Appeal in Butt vs. Rent Restriction Tribunal [1982]eKLR 417**, that in an application for a stay of execution of a judgment, the court acts on the principle that its discretion will be exercised in a way which does not prevent an appeal from being made by the loser.
5. Further the Court of Appeal has held in **African Safari Club Vs. Safe Rentals Ltd., Court of Appeal at Nairobi, Civil Application No. Nairobi 53 of 2010** that courts are enjoined to act as to enable parties to exercise their appellate rights; they are to act fairly and justly; to have regard to the substantive justice of the matters before them and weigh the relative hardships of the parties before them. The application of this principle results in the maintenance of the status quo of the parties at the time of judgment.
6. Upon considering the facts of this case, the court is of the view that the decretal amount is very large and it would be difficult for the claimant/respondent to refund the same, if he were to be paid and the appeal is subsequently successful. This is likely to result in substantial loss to the

- applicant.
7. The application has been brought without substantial delay the judgment having been delivered on 27th August 2015 and the application was filed on 17th November 2015, following filing of a notice of appeal.
 8. Furthermore, the applicant has demonstrated that it has an arguable appeal that may be rendered nugatory if the stay is not granted. See **(Kenya Kazi Services Union vs. Kenya National Private Security Workers Union Court of Appeal at Nairobi [2013] eKLR)**.
 9. Accordingly, the court grants stay of execution of the judgment by Lady Justice Maureen Onyango dated 26th August 2015 and delivered on 27th August 2015 pending the hearing and determination of appeal on condition that respondent / applicant shall furnish security to the claimant / respondent in the form of a bank guarantee of the amount of Kenya Shillings 23,495,500.00 within thirty (30) days from the date of delivery of this ruling failing which the order for stay will automatically lapse.

Dated and Delivered at Nairobi this 5th day of February 2016.

MATHEWS NDERI NDUMA

PRINCIPAL JUDGE