

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS

COURT OF KENYA AT NAIROBI

CAUSE NO. 2288 OF 2012

TRANSPORT WORKERS UNION.....CLAIMANT

VERSUS

PUMA WHOLESALERS LIMITED.....RESPONDENT

RULING

1. The Respondent / applicant brought a notice of motion application dated 14th October 2015, seeking for orders *inter alia*;
2. To be allowed to file a notice of appeal out of time against a ruling of the court delivered on 25th September 2015 dismissing an application for review of the judgment of the court delivered on 4th December 2014 by Hon. Maureen Onyango J.
3. That the court issues an interim order for stay of execution of the judgment delivered on 4th December 2014 and consequential orders arising from the ruling of 25th September 2015.
4. The application is supported by an affidavit of the applicant in which he states that in the intended appeal he seeks to get understanding of the ruling of the court dated 25th September 2015. The applicant explains the delay in noting the appeal on the fact that the ruling was delivered without the knowledge of his advocates since it was earlier scheduled for delivery on 18th September 2015.
5. The application is opposed vide a response filed on 29th October 2015 stating that the application lacks merit since an appeal ought to have been lodged against the judgment of Lady Justice Maureen Onyango delivered on 4th December 2014. That the applicant instead opted to file an application for review which was dismissed on 18th September 2015. That the same be dismissed to allow the claimant/respondent to enjoy the fruits of the judgment.

Determination

6. The application to enlarge time within which the applicant is to file a notice of appeal is misconceived, the notice of appeal having been already filed without leave of court on 14th October 2015.
7. Secondly, the judgment of the court was delivered on 4th December 2014, about eleven (11) months from the date this application was filed. The applicant squandered the opportunity to appeal against that judgment and cannot be heard to seek stay of execution of the same eleven (11) months down the line. The application does not disclose any justification for stay of execution.
8. There must be an end to litigation and the court is of the view that, once a party elects to seek review of a judgment, the party cannot many months later, after the application for review has been dismissed be allowed to stay the judgment of the court pending an intended appeal. This is an attempt to have a second bite on the cherry at the expense of the decree holder. Expedient conclusion of cases is an overriding factor in administration of justice.

9. The application for stay of execution pending filing of appeal to the Court of Appeal is refused accordingly.

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

MATHEWS NDERI NDUMA

PRINCIPAL JUDGE