



**REPUBLIC OF KENYA**

**EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**

**CAUSE NO. 2203 OF 2012**

**(Before Hon. Lady Justice Hellen S. Wasilwa on 30<sup>th</sup> March 2016)**

**TEDDY MUTUKU KISOI.....CLAIMANT**

**VERSUS**

**KENYA WILDLIFE SERVICE .....RESPONDENT**

**RULING**

1. The Application before Court is the one dated 9/12/2015 filed by the Respondent Applicant under Certificate of Urgency. The Application was filed through a Notice of Motion brought under Section 12(3)(i) and (viii) of the Employment and Labour Relations Court Act, Rule 31(2) of the Industrial Court (Procedure) Rules 2010, and all the enabling Provisions of the law.
2. The Applicant seeks the following orders:
  1. *That this Application be certified urgent and be heard ex-parte in the first instance.*
  2. *That stay of Execution be granted herein pending the hearing and determination of this Application.*
  3. *That stay of Execution be granted herein pending the hearing and determination of the Respondent's intended Appeal.*
  4. *That the Court be at liberty to make such other order that it deems appropriate to grant.*
  5. *That the costs of this Application be provided for.*
3. The Application is grounded on the annexed affidavit of Thomas Ogola, the Applicants Ag. Corporation Secretary and on the following grounds:
  - a. *The Claimant obtained Judgment against the Applicant against the Respondent on 1<sup>st</sup> December, 2015.*
  - b. *The Claimant may apply for a decree for execution against the Applicant at the expiry of the 30 days stay granted.*
  - c. *The Applicant being dissatisfied with the Judgment intends to appeal against the same and if the Claimant is allowed to proceed with the execution against it then the Appeal will be rendered nugatory.*

- d. *The Applicant stands to suffer substantial loss should the Decretal sum be paid to the Claimant and the Appeal succeeds.*
  - e. *The Applicant has an arguable Appeal which is not frivolous.*
  - f. *The Applicant is ready and willing to provide security that may be imposed as a condition for grant of the Order of stay of execution.*
4. It is the Applicant's averment that they are dissatisfied with the Judgment of this Court delivered on 1/12/2015 and have since filed a Notice of Appeal on 3/12/2015.
  5. They aver that they have reasonable apprehension that the Claimant may proceed to apply for a decree for execution against them if stay is not granted and therefore the appeal if it succeeds will be rendered nugatory.
  6. They aver that they will suffer substantial loss should the decretal sum be paid to the Claimant and the appeal succeeds.
  7. They have submitted that they are ready, willing and able to abide by such reasonable terms that may be imposed as a condition for grant of the order of stay.
  8. They also argue that the appeal is arguable and they have annexed a draft Memorandum of Appeal.
  9. The Respondent opposed this Application. The Respondent filed his replying affidavit on 7/1/2016 and he avers that there are no valid grounds raised in the Application to warrant a stay of execution of the Judgment dated 1.12.2015.
  10. They also deny that the intended appeal is arguable with a high chance of success. It is also their contention that the appeal is frivolous and unlikely to succeed.
  11. They aver that the Application and the intended appeal is an abuse of the Court process and an attempt to deny him his fruits of his Judgment.
  12. The parties agreed to dispose of this Application by way of written submissions.
  13. Order 42 Rule 6(2) of the Civil Procedure Rules 2010 provide as follows:

**“No order for stay of execution shall be made under subrule (1) unless:**

    - a. **the court is satisfied that substantial loss may result to the Applicant unless the order is made and that the application has been made without unreasonable delay; and**
    - b. **such security as the Court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the Applicant”.**
  14. The Order being sought by the Applicant can only be granted if the above provisions of the law are met. It is apparent that the Applicants made this Application within 8 days after the Judgment was delivered and so they came to Court without unreasonable delay.
  15. They have not however satisfied this Court what loss they will suffer if the order sought is not granted.
  16. However, this is a discretionary remedy and I find that they are entitled to orders sought for stay which I allow.

17. However, this stay is subject to the Applicants depositing the entire decretal sum in Account held in the joint names of Counsel for Applicant and Respondent within 30 days in default execution to issue.

Read in open Court this 30<sup>th</sup> day of March, 2016.

**HON. LADY JUSTICE HELLEN WASILWA**

**JUDGE**

**In the presence of:**

Ndolo holding brief for Kilonzo for the Claimant – Present

Lutta & Company for Respondents – Absent