

REPUBLIC OF KENYA

EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI

CAUSE NO. 1845 OF 2013

CHARLES MUSYOKI WANZA CLAIMANT

VERSUS

BHAGHUBHAI BHAILAL..... RESPONDENT

Chege Mungai for Respondent/Applicant

Claimant/Respondent in Person

RULING

1. The Court delivered judgement in favour of the Claimant/Respondent on 6th November 2015 awarding the Claimant Kshs 94,000 comprising of payment of one month's salary in lieu of notice; 13 $\frac{3}{4}$ leave days; service gratuity; four months compensation and provision of certificate of service.
2. The Respondent/Applicant filed an application dated 9th December 2015 on the same day seeking stay of execution of the judgement and decree of the court pending appeal.
3. The basis of the application for stay as set out in the Notice of Motion is that the Claimant is a man of straw and would be unable to repay the judgement sum of Kshs 94,700 if the appeal was successful. The Respondent /Applicant is ready and willing to comply with any reasonable terms this honourable court may impose.
4. The application is supported by an affidavit of the Respondent deposed to on 8th December 2015 and a supplementary affidavit dated 9th December 2015.
5. The applicant has not in the notice of motion or in the two affidavits attested to any probability of success of the intended appeal. As a matter of fact nothing is said at all on whether or not the intended appeal is arguable and the grounds on which the appeal is based.
6. The grant of stay of execution is a discretion by the court that must be exercised judiciously. The Respondent/Applicant has not attempted whatsoever to show that the Claimant/Respondent is a man of straw and that payment of terminal benefits in the sum of Kshs 94,700 to the Claimant/Respondent would render the intended appeal nugatory.
7. The Application is opposed vide a replying affidavit deposed to by the Claimant on 14th December 2015 in which he states that the judgement of the court is sound in law and fact, and the Respondent/Applicant has not discharged the onus placed on him to show that the appeal is arguable and same would be rendered nugatory if the stay is not granted.
8. It is the Court's finding that indeed the Respondent/Applicant has failed to discharge the onus placed on it in this respect. To the contrary the balance of convenience is in favour of disallowing the application and let the Claimant/Respondent enjoy the fruits of his judgement.
9. The Application is dismissed with costs.

Dated and delivered at Nairobi this 18th day of March 2016.

MATHEWS N. NDUMA

PRINCIPAL JUDGE