



REPUBLIC OF KENYA

EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI

CAUSE NO. 565 OF 2012

GEOFFREY MWAKIO.....CLAIMANT

VERSUS

KENYA BROADCASTING CORPORATIONRESPONDENT

Mr E. Ogeto Ongori for Claimant/Applicant

Mr Saende for Respondent

RULING

1. Serving before court is a Notice of Motion application which seeks an order in the following terms;
 - i. This Hon. Court do direct the Respondent (KCB) to deposit the balance of decretal sum being Kenya shillings three million, five hundred and twenty five thousand eight hundred and sixty three and thirty cents (Kshs 3,525,863.30) together with interest for the entire decretal sum from the date of the judgement with S. Ogeto Ongori & Co Advocates as security pending further orders of the court.
 - ii. In the alternative the balance of the decretal sum together with interest from date of judgement be assessed by the tax master and deposited into a joint interest earning account in the name of the Advocates.
 - iii. That a stay order issued by this Hon. Court on 17th September 2015 be and is hereby set aside as there is no appeal pending.
2. The Application is supported by the grounds set out on the face of the Notice of Motion and the annexed affidavit sworn by Geoffrey Mwakio, the Claimant/Applicant to wit;
3. That judgement in this matter was entered on the 4th December 2014 by Hon. Nduma J and subsequently a Notice of Appeal was filed in court on 10th December 2014.
4. That the Respondent filed an application for stay of execution dated 12th January 2015 which application was determined by the orders delivered and issued on 24th April 2015 and 29th July 2015 respectively.
5. That subsequent to the Ruling of the court for stay of execution on 24th April, 2015 the Respondent filed another application for stay in the Court of Appeal which application was determined by an order of the court by a three bench judge on the 17th September 2015.
6. That the Respondent has disobeyed the orders of the court and is buying time to frustrate the decree holder and that the delay to file the appeal cannot be explained by the Respondent and that there is non pending.

7. The application is opposed vide grounds of opposition filed on 10th November 2015 to wit;
 - i. The issues raised by the Claimant were ventilated by both parties in the Respondent's application dated 12th January 2015 and a ruling given by this Hon. Court on 24th April 2015 granting the Respondent a conditional stay of execution pending appeal. The Respondent has already met the conditions set in the ruling dated 24th April 2015 and paid to the Claimant a sum of Kshs 3,000,000.
 - ii. The Claimant's attempt to review the ruling and orders issued on 24th April 2015 yet the appeal has not been heard and determined and there are no grounds for any sort of review.

Response

8. The Respondent filed a replying affidavit sworn by Margaret Ochieng the legal officer of the Respondent. The Respondent admits that no appeal has been filed since the proceedings of this court have not been typed despite follow up by the Respondent as shown through annexure 'MO2' to the replying affidavit dated 13th November 2015. That without this proceedings the respondent cannot be able to complete its record of appeal.
9. The Respondent prays that the application be dismissed for lack of any merit.

Determination

10. The court has carefully perused the record and has noted that by a letter dated 9th December 2014 the Respondent wrote to the Deputy Registrar of this court seeking to be provided with certified copies of the proceedings for purpose of filing an appeal.
11. On 27th February 2015 the Respondent wrote a reminder to the court to be provided with the typed proceedings. Another letter dated 7th August 2015 was written to the Deputy Registrar to provide typed proceedings.
12. It is the court's considered view that the Respondent has not been indolent and cannot be accused of sitting on its right to file an appeal timeously. To the contrary, the Respondent has been frustrated by the delay by the court to provide it with typed proceedings and this failure by the court cannot be visited on the Respondent.
13. The Application has not disclosed any reasonable grounds for the court to review its orders for conditional stay of execution granted to the Claimant/Applicant on 24th April 2015.
14. In any event, the Respondent has complied with the terms of the conditional stay of execution pending appeal aforesaid.

The Application lacks merit and the same is dismissed with costs to the Respondent.

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

MATHEWS N. NDUMA

JUDGE