



REPUBLIC OF KENYA

EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO. 1179 OF 2011

(Before Hon. Lady Justice Hellen S. Wasilwa on 14th March 2016)

KENYA CHEMICAL & ALLIED WORKERS UNIONCLAIMANT

VERSUS

NOBLE GASES LIMITEDRESPONDENT

RULING

1. The Application before Court is the one dated 20/11/2015 and the Applicants seek orders for stay of execution and/or any proceedings emanating from the Judgment of this Honourable Court delivered on 21.10.2015 pending hearing and determination of their intended appeal herein.
2. The Application is brought through a Notice of Motion brought under Order 42 Rule 6(1) and (2) of the Civil Procedure Rules and Section 3A of the Civil Procedure Act.
3. The Application is brought on the grounds that the Applicants have filed a Notice of appeal within the stipulated time and that they have an arguable appeal. They also state that the Respondent is set to initiate execution proceedings in enforcement of the Court's Judgment any time from now.
4. They aver that unless stay is issued they will suffer substantial loss and the intended appeal will be rendered nugatory. They are willing to comply with such terms as the Court may impose as a condition for grant of prayers sought.
5. The Respondent opposed this application and they filed a replying affidavit sworn by one Were Dibo Ogutu the Respondent's National General Secretary.
6. They aver that the application is an abuse of the Court process, has no merit and is intended to frustrate the Claimants. They have submitted that if the Court allows this application then the Applicants should be ordered to deposit the entire decretal sum in a joint interest earning account of the parties being 701,652/= plus costs of 267,000/= all totaling to 968,652/=.
7. They want Court to dismiss this application.
8. Order 42 Rule 6(1) and (2) provides as follows:

“6.(1) No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except in so far as the court appealed from may order but, the court appealed from may for sufficient cause order stay of execution of such decree or order, and whether the application for

such stay shall have been granted or refused by the court appealed from, the court to which such appeal is preferred shall be at liberty, on application being made, to consider such application and to make such order thereon as may to it seem just, and any person aggrieved by an order of stay made by the court from whose decision the appeal is preferred may apply to the appellate court to have such order set aside.

(2) 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.**

9. From this order, the conditions to be satisfied are that the application is made within reasonable time and that reasonable security as directed by Court is provided.

10. The Applicants have already filed a Notice of appeal and under Order 42 Rule (6) (4) – “For purpose of this Rule, an appeal to the Court of Appeal shall be deemed to have been filed when under the Rules of that Court “Notice of Appeal has been given”.

11. I can therefore state that the Notice of Appeal filed is evidence of the intended appeal.

12. The Judgment of this Court was made on 21.10.2015 and the Applicants filed this application 20.11.2015 within 1 month. I believe one month is within reasonable time.

13. On security, the Applicants have deponed that they are willing to abide by any order directed by the Court.

14. In view of the fact that the Applicants came to Court within reasonable time and in view of the fact that a Notice of Appeal has been filed, declining the Application may render the intended appeal nugatory.

15. I therefore allow this application on condition that the Applicants deposit the entire decretal sum in an interest earning Account held in the joint names of the Parties/their Counsels/Union within 30 days. In default execution to issue.

Read in open Court this 14th day of March, 2016.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Opiyo for the Claimant

No appearance for Respondent