



REPUBLIC OF KENYA
EMPLOYMENT & LABOUR RELATIONS COURT OF KENYA

AT KERICHO

CAUSE NO.241 OF 2015

(Before D. K. N. Marete)

PAUL KOECH & 12 OTHERS.....CLAIMANTS

VERSUS

PURECIRCLE (K) LIMITED.....RESPONDENT

RULING

The respondent/applicant has filed two applications in this cause. The 1st is the application dated 3rd December, 2015 and seeks the following orders of court;

1. *THAT this Application be certified as urgent and service of the same be dispensed with in the first instance.*
2. *THAT this Application be heard and stay of execution of the Honourable Court's Ruling/Order dated 19th November, 2015 be granted ex-parte in the first instance pending inter-parties hearing and determination of this Application.*
3. *THAT there be stay of execution of the aforesaid Ruling/order pending the hearing and determination of the intended Appeal preferred therefrom.*
4. *THAT the costs of this Application be provided for. and is grounded on;*
 - a. *THAT the applicant has preferred an Appeal and has lodged the requisite Notice of Appeal against the Ruling/Order herein to the Court of Appeal and which Appeal is competent and has appreciable chances of success.*
 - b. *THAT if execution of the said Ruling/Order is not stayed, the aforesaid Appeal will be rendered nugatory and would thereby occasion substantial financial loss to the Applicant.*
 - c. *THAT the Respondents are at liberty and may proceed to execute on the basis of the Ruling/Order subject of the preferred Appeal at any time.*
 - d. *THAT in the premises it is only fair and just that there be stay of execution of the Ruling/Order subject herein pending the inter-partes hearing and determination of the instant Application and/or the hearing and determination of the preferred Appeal, as the case would be.*

e. *THAT the Applicant has moved the Court within the time stipulated by the law/timeously.*

The claimant/respondent opposes this application vide Grounds of Opposition dated 14th January, 2016 as follows;

1. *That the said application is incurably defective and the same should be struck out with costs.*
2. *The application is a delaying tactic employed by the Respondent to ensure that the claimants do not get their entitlement.*
3. *The Respondent/Applicant has not demonstrated grounds for stay of execution pending appeal.*
4. *The Respondent/Applicant is in contempt of court and has no right of audience before the Honourable Court until it purges the contempt.*

They have also filed a Replying Affidavit sworn on 28th January, 2016 in further opposition to the application.

The 2nd application by the respondent is dated 22nd February, 2016 and prays for orders as follows;

1. *THAT this application be heard and stay of proceedings herein be granted ex-parte in the first instance pending inter-parties hearing and determination of this Application.*
2. *THAT this honourable court be stay proceedings herein pending hearing and determination of an appeal preferred against this court's ruling delivered on 16th November, 2015.*
3. *THAT the costs of this application be provided for. and is grounded on;*
 - a. *THAT applicant is aggrieved by the ruling delivered on 16th November, 2015 and has instructed counsel on record to appeal against the said ruling.*
 - b. *THAT notice of the intended appeal has already been given as required by law.*
 - c. *THAT the appeal is competent and meritorious with appreciable chances of success.*
 - d. *THAT the said appeal will be rendered nugatory and an academic exercise in the event that proceedings herein are not stayed.*
 - e. *THAT in the premises it is only fair and just that there be stay of proceedings herein for the ends of justice to be made.*
 - f. *THAT the respondents will not suffer prejudice as security for the claim is already deposited in court.*

The claimants/respondent in opposition to this application have filed a Replying Affidavit and Grounds of Opposition sworn and dated 8th and 10th March, 2016 respectively.

When the matter came for hearing on 12th April, 2016 the respondent/applicant sought to rely on her affidavits as filled in support of the applications. The claimants/respondents also choose to rely on their pleadings as set out above in opposition. This was coupled with a submission that the prayers sought, stoppage of proceedings are not tenable as these are not provided for in any law directing proceedings of this court. It was their further submission that section 12 of the Employment Act is not relevant in the circumstances.

Again, in the case of stay of execution, grounds must be adduced. It is the respondent's further submission that this court has no power or jurisdiction to grant stay of its proceedings. In the

circumstances of this case, no appeal has been filed and therefore a prayer that these applications be dismissed with costs.

These two applications are similar in several aspects. They seek prayers for stay of execution and stay of proceedings pending appeal of a ruling of court delivered on 16th November, 2015. It is on record that the applicant has complied with the ruling and made a deposit of Kshs. 4,779,321.00 being 50% of the claim as ordered by the court. These applications are therefore academic in that the parties are also set out on the way forward in a determination of the main suit. These applications do not seem to be brought out in good faith and are intended to derail an eventual determination of the claim. They do not even meet the criteria for stay of execution as to timeliness. The intended appeal is also not well established.

I am therefore inclined to dismiss the application with costs to the claimants/respondents.

Delivered, dated and signed this 15th day of April 2016.

D.K.Njagi Marete

JUDGE

Appearances

1. M/s Getanga instructed by M/s Mukite Musangi & Company Advocates for the respondents/applicants.
2. Mr. Nyabena instructed by Nyabena Nyakundi & Company Advocates for the claimants/respondents.