



REPUBLIC OF KENYA

EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA

AT KERICHO

CAUSE NO.158 OF 2015

(Before D. K. N. Marete)

JOHANNA KIPLIMO KOSGEICLAIMANT/RESPONDENT

VERSUS

MINI BAKERIES (NAIROBI) LIMITED.....APPLICANT/RESPONDENT

RULING

This is an application dated 7th April, 2015 by the Respondent/Applicant. It is brought to court under a certificate of urgency dated 14th April, 2016 and seeks the following orders of court;

1. *That this application be certified as urgent and that the same be heard and orders issued ex-parte in the first instance.*
2. *That pending inter-partes hearing of this application, there be a stay of execution of the decision/judgement of this Court that was delivered on 24th February, 2016.*
3. *That pending the hearing and determination of the application herein, there be a stay of execution of the decision/judgement of this Court that was delivered on 24th February, 2016.*
4. *That pending the hearing and determination of the Appeal against the decision/judgement of this Court that was delivered on 24th February, 2016, this Court be pleased to grant a stay of its execution.*
5. *That this Honourable Court be pleased to grant any such other or further orders that it may deem fit and just to grant in the circumstances.*

and is grounded;

- a. *The Applicant is aggrieved by the decision/judgement delivered on 24th February, 2016 and has filed a notice of appeal.*
- b. *Application before Court has been brought without unreasonable delay.*
- c. *Whereas the Court is not being asked to sit on an appeal of its own decision, the Applicant believes that the Court failed to appreciate that the Respondent did not prove his case on a*

balance of probabilities as there was no evidence to support his case.

- d. *The Applicant has a good appeal which has a high probability of success which will be rendered a nugatory unless the orders sought are granted.*
- e. *The Applicant is willing to deposit security that the Court may order. Further the applicant undertakes to comply with the terms and directions that the Court shall grant upon allowing the application.*

The claimant/respondent in a Replying Affidavit sworn on 29th April, 2016 opposes the application and prays that it be dismissed with costs.

The matter came to court on 14th April, 2016 when it was ordered that it be disposed off in the ordinary cause of business. On 4th May, 2016 the parties agreed on a disposal by way of written submissions whereas a consolidation with causes No. 185 of 2015 and 186 of 2015 was made on 9th May, 2015 thus paving way for a hearing on the same date.

At the hearing, Mr. Sigira, counsel for the respondent/applicant submitted that he sought prayers as set out at paragraph 4, 5 and 6. It was his further submission that were brought to court under law and procedure and supported by an affidavit the respondents legal officer and that this also applies to cause Nos. 185 and 186 of 2015.

The claimant/respondent opposed the application on the basis that the Civil Procedure Act on which the application is based is not applicable. It is his submission that the application ought to have been under rule 16 of the Industrial Court (Procedure) Rules, 2010. Again, he submits, there is no appeal on record as yet, yet rule 8 (2) of these procedure rules awards thirty (30) days in which to file an appeal. In the instant case, one is presented with a mere notice of appeal which is only intent at appeal, no more.

It is also the claimant/respondent further submission that Section 17(2) of the Industrial Court Act, 2011 provides that appeals can only be ---- matter of law and this is not demonstrated in the circumstances.

It is the claimant/respondents further submission that this application is a delay tactic and frustrates the principle objectives of the Industrial Court Act as provided at Section 3 (3). It is a denial of the fruits of judgement.

The claimant/respondent in addition submits the proposal for a deposit of security as made by the applicant remains hollow as this is not even based on her pleadings. Again, the applicant has not demonstrated that he is likely to suffer substantial loss in the event of not being granted the orders sought and that the application is not made without undue delay. He therefore prays that this be dismissed with costs.

I have looked at the submissions of the parties in support of their respective cases in this application and averly agree with the claimant/respondent that this application is not in good faith. Firstly, the application is not made without undue delay, judgement was delivered on 24th February, 2016 whereas the application comes in on 14th April, 2016. This is fifty days down the line and this delay is not explained. It is inordinate. Besides, the applicant does not demonstrate the possibility of substantial loss likely to be suffered in the event of a denial of this application, the offer of a deposit for security sounds belated and an after thought as observed and submitted in opposition by the claimant/respondent.

This application therefore must fail. I am therefore inclined to dismiss it with costs to the claimant/respondent.

Delivered, dated and signed this 26th day of May, 2016.

D.K.Njagi Marete

JUDGE

Appearances

1. Mr. Siele Sigira instructed by Siele Sigira & Company Advocates for the respondent/applicant.
2. Mr. Kirwa instructed by Mwakio Kirwa & Company Advocates for the claimant/respondent.