

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT MOMBASA

CAUSE NO. 252 OF 2014

JOHNSON NGONTO & 8 OTHERS.....CLAIMANT

VS

PEPONI HOTEL LIMITED.....RESPONDENT

RULING

Introduction

1. On 7.11.2014, this court entered judgment in favour of the claimants in the sum of kshs. 2,963,933.56. The respondent was aggrieved and preferred an appeal by filing a Notice of appeal on 11.11.2014. There after the respondent sought for stay of execution and on 6.3.2015, the parties recorded a consent order for stay on condition that the respondent deposited the whole decreed sum in court pending appeal. After waiting for almost a year without being served with any appeal, the claimant have now brought the present motion dated 4.2.2016 seeking to have the whole decretal sum, deposited in court, totaling to ksh.2,963,933.36, released to their counsel. The main ground cited in the motion is the respondent never filed any appeal after obtaining the stay order. That the claimants are in need of funds because they are not in gainful employment.

2. The respondent has opposed the motion through the Replying Affidavit sworn on 9.2.2016 by her counsel Mr. David Tole. According to the counsel the respondent filed her Notice of Appeal and sought certified copy of typed proceedings and judgment in time. That thereafter the counsel has written several reminders to the Deputy Registrar of the court but he has since not been supplied with the certified typed proceedings and judgment as requested. That the delay in filing the record of appeal according to the counsel has been occasioned by failure by the Deputy Registrar to avail the requested proceedings and judgment.

Analysis and Determination

3. After considering the Notice of Motion and the rival affidavits and submissions by the two parties, the issue for determination is whether the respondent has deliberately defaulted to file his appeal after obtaining stay of execution.

4. Mr. Makau, learned counsel for the claimants admitted in his submissions before court that the respondent had written to the Deputy Registrar of the court on 11.11.2014, 4.6.2015 and a week before the hearing of the present motion seeking typed proceedings and certified copy of judgment for purposes of filing appeal. He, however submitted that writing the letters was not sufficient effort towards obtaining the proceedings from the court. On the other hand, Mr. Tole denied that the respondent has relaxed after getting stay of execution. He submitted that his client complied with section 75 of the Court of Appeal Rules by filing a Notice of Appeal on 12.11.2014 and applied for typed and certified proceedings on 11.12.2014. That thereafter the respondent wrote reminders on 4.6.2015, 10.8.2015 and 3.2.2016 but the proceedings have not yet been supplied. He therefore denied any deliberate neglect to lodge the appeal on the part of the respondent.

5. After considering the material before it, this court is satisfied that the respondent is not to blame for deliberate neglect to lodge her appeal. She requested for typed proceedings in time and even wrote several

reminders to the Deputy Registrar of the court but the same were never availed. She cannot be accused of any indolence because she has actively been following up the matter of typed proceedings and judgment in vain. She was not just writing letters and posting. Someone was attending the court to deliver the letters, all of which were acknowledged by an official receiving stamp of the court.

6. For the foregoing reason therefore the court will not set aside the consent stay order or release the security to the claimant at the moment as requested. Instead the court hereby directs the Deputy Registrar to have the proceedings of the court to be typed and thereafter supply certified copy thereof and the judgment to the respondent within 30 days from today upon payment of the necessary court fees by the respondent. Thereafter this suit will be mentioned before this court on a date to be fixed today by the parties to confirm whether the Deputy Registrar has complied herewith.

Disposition

7. The Notice of Motion dated 4.2.2016 is dismissed. The Deputy Registrar to supply the respondent with certified copies of typed proceedings and judgment within 30 days from today. No order as to costs.

Dated, signed and delivered this 6th day of May 2016

ONESMUS MAKAU

JUDGE