



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI**

**CAUSE NO. 1340 of 2014**

**KENYA SCIENTIFIC RESEARCH INTERNATIONAL TECHNICAL AND**

**INSTITUTIONS WORKERS UNION (KSRTAIWU) .....CLAIMANTS/RESPONDENT**

**VERSUS**

**HEALTY U (2000) LTD .....RESPONDENT/APPLICANT**

**RULING**

1. Serving before court is a Notice of Motion application dated 14<sup>th</sup> April 2016. The applicant seeks a stay of execution of the court's award delivered on 18<sup>th</sup> March 2016 pending the hearing and determination of intended appeal.
2. The application is based on the grounds set out on the face of the application and the supporting and supplementary affidavits sworn by Stephen M. Amadolo Namunyanyi on 14<sup>th</sup> April 2016 and 26<sup>th</sup> May 2016 respectively.
3. The application is opposed via the replying affidavit sworn by Wilson Ochanda Ondulo on 28<sup>th</sup> April 2016.
4. The butt of the application is that the applicant being dissatisfied with the judgement of the court delivered on 18<sup>th</sup> March 2016 desires to appeal against the whole of the said judgement and has since filed a notice of appeal and attached a draft memorandum of appeal setting out the grounds that it will rely on and thus seeks stay of execution pending the hearing and determination of the appeal.
5. That the appeal is arguable, the application for stay has been brought without delay and that the applicant is willing to furnish security in the form of a bank guarantee.
6. The gravamen of the opposition is that the application for stay is a scheme to frustrate the claimants and that the intended appeal is not arguable. That the applicant has not demonstrated that the appeal would be rendered nugatory if an order for stay of execution is not granted. That it would not serve the interest of justice to allow the application.
7. The issues that arise for determination are as follows;
  - i. Whether the applicant has an arguable appeal

- ii. If the intended appeal would be rendered nugatory, if an order for stay is not granted
- iii. Whether the application has been brought in good time and without unreasonable delay
- iv. Whether furnishing of a bank guarantee would suffice to balance the scale of justice pending the intended appeal

## **Determination**

### **Issue i**

8. In the case of **Francis Odhiambo Omondi T/A Omondi & Co Advocates Vs National Bank of Kenya Limited & 2 Others**[2014] eKLR at page 2 paragraph 8, Kimondo J quoted the Court of Appeal case of **Hashnuklal Virchand and Another Vs Investment & Mortgage Bank Limited** [2014] eKLR where the court observed as follows;

*“On the issue of the intended appeal being arguable, it is trite law that an arguable point need not be one which will succeed but one which is worth of the courts interrogation in that an arguable appeal is not one which must necessarily succeed but one which ought to be argued fully before that court, one which is not frivolous”.*

Having looked at the draft memorandum of appeal the court is satisfied that the applicant has an arguable appeal.

### **Issue iii**

9. The judgement of the court was delivered on 18<sup>th</sup> March 2016 and the application for stay of execution pending intended appeal was filed on 15<sup>th</sup> April 2016 hardly a month after. It is the finding by the court that the application was filed within a reasonable time and without any inordinate delay.

### **Issue ii & iv**

10. Issue (ii) and (iv) are dealt with together as the same are related. The judgement sum is Kshs 2,372,358. The amount is payable to the claimant union on behalf of its 15 members listed under paragraph 11 of the memorandum of claim. Each of the claimant is to receive between 76,653 and 213,765.

11. These employees are still in the employment of the respondent and the decretal amount if paid would easily be recovered from their salaries. The court finds that the intended appeal would not be rendered nugatory if an order for stay of execution pending the intended appeal is not granted.

12. In the interest of justice however, the court orders that there be stay of execution pending the intended appeal provided the applicant deposits the decretal sum in court within 30 days from date of this ruling failing which the order for stay or execution will abate and execution to follow.

**Dated and delivered at Nairobi this 27<sup>th</sup> day of July, 2016.**

**MATHEWS N. NDUMA**

**PRINCIPAL JUDGE**