



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA**

**AT NYERI**

**CAUSE NO. 1 OF 2015**

**JOSEPHAT NDERITU CHEGE.....CLAIMANT**

**VERSUS**

**POSTAL CORPORATION OF KENYA.....RESPONDENT**

**(Before Hon. Justice Byram Ongaya on Friday, 15<sup>th</sup> July, 2016)**

**RULING**

The respondent filed a notice of motion on 23.06.2016 through Nyiha, Mukoma & Company Advocates. The application was brought under order 42 rule 6, order 22 rule 22 of the Civil Procedure Rules, section 3, 3A, of the Civil Procedure Act and all other enabling provisions of the law. The respondent prayed for orders as follows:

- a. That the application be certified urgent and be heard ex-parte in the first instance in view of its urgent nature and its service be dispensed with in the first instance.
- b. That there be stay of execution of the judgment entered on 18<sup>th</sup> December 2015 pending the hearing and determination of the appeal against the judgment issued on 18<sup>th</sup> December, 2015.
- c. That pending the hearing of this application inter partes the attachment levied herein on 16<sup>th</sup> June 2016 pursuant to warrants of attachment issued herein on 1<sup>st</sup> June 2016 and proclamation of attachment of movable property in execution of a decree for money issued herein on 16<sup>th</sup> June 2016 be lifted, raised or stayed.
- d. That costs of the application be provided for.

The application was supported with the affidavit of the respondent's acting director for legal services and corporation secretary Jane F. Otieno also filed on 23.06.2013.

In urging the application, it was submitted for the respondent as follows:

- a. The respondent wished and intended to appeal against the judgment delivered by the court on 18.12.2015.
- b. There was no valid notice of appeal because no notice of appeal had been filed within the prescribed timelines but that the respondent had filed an application in the Court of Appeal seeking

extension of time for filing the notice of appeal.

c. As directed by the court at the ex-parte hearing of the application, the respondent had deposited in court the judgment sum of Kshs.3, 707, 708.00 being security if the stay orders were granted. Further, as directed by the court the respondent had paid the entire auctioneer's fees and costs.

d. Section 25 of the Postal Corporation of Kenya Act, Cap. 411 prohibited execution by attachment of the respondent's property but that the respondent's postmaster general was obligated under the section, without delay, to settle the judgment sum out of the respondent's revenue.

e. The respondent is a public body funded by the tax payers' money hence the need to safeguard the same.

f. The applicant had come to court without delay.

g. The orders when granted will serve ends of justice.

The claimant opposed the application by filing his replying affidavit on 20.06.2016 through Wahome Gikonyo & Company Advocates.

In opposing the application it was submitted for the claimant as follows:

a. There was no pending appeal because the respondent had not established that a valid notice of appeal was on record.

b. The judgment was delivered on 18.12.2015, costs were taxed on 15.04.2016 by consent of the parties and despite letters of 21.03.2016 and 5.05.2016 the respondent had failed to reply about the payment of the judgment sum.

c. The claimant was entitled to enjoy the fruits of his successful litigation.

d. The respondent had deposited with its advocates the judgment sum sometimes in May 2006 and there was no reason for the failure to pay out the money to the claimant. The money deposited in court should now be released to the claimant.

e. The application was filed after inordinate and unexplained delay.

f. There was no substantial loss established on the part of the respondent if execution proceeded in satisfaction of the court orders as made in the judgment.

The claimant further relied upon the grounds of opposition filed on 27.06.2015 that the application was an abuse of court process; was misconceived and incompetent; was frivolous and vexatious; and was otherwise without merit and should be dismissed with costs.

The court has considered the parties' respective submissions and makes findings as follows:

a. The respondent has not explained why the application was made belatedly on 23.06.2016 whereas the judgment was delivered on 18.12.2015. As submitted for the claimant, the court considers that the application is aimed at unfairly delaying the claimant's enjoyment of the fruits of his successful litigation.

b. There is no dispute that there is no valid notice of appeal on record and seeking stay of execution pending appeal is clearly an abuse of the court process.

c. The respondent has not established the substantial loss it would suffer if the orders of stay of execution are not granted. There was no material on record to support the respondent's submission

that its budget would be impaired with deficits if the judgment was satisfied and more so, it was not established that there were no revenues out of which the statute required the postmaster general to pay the money.

d. Section 25 of the Postal Corporation of Kenya Act, Cap. 411 obligated the postmaster general to pay the judgment sum promptly and there is no reason advanced why the obligation was not discharged.

e. Under section 25 of the Postal Corporation of Kenya Act, Cap. 411 the postmaster general is by statute required to promptly pay the judgment sum out of the respondent's revenues and nothing has been advanced to prevent the postmaster general from paying as provided in the section.

f. The court returns that the application as made fails to satisfy the conditions for orders of stay of execution pending appeal prescribed under order 42 of the Civil Procedure Rules for want of a valid pending appeal; in view of inordinate unexplained delay in making the application; and for want of established substantial loss on the part of the applicant if the orders of stay as prayed for are not granted.

In conclusion the application dated 22.06.2016 is hereby dismissed with orders as follows:

1. The sum of Kshs. 3,707, 708.00 deposited in court be released to the claimant forthwith.
2. All outstanding payments in view of the judgment and decree be paid to the claimant by the postmaster general as provided in section 25 of the Postal Corporation of Kenya Act, Cap. 411 and not later than 01.09.2016.
3. The respondent to pay costs of the application.

**Signed, dated and delivered** in court at Nyeri this **Friday, 15<sup>th</sup> July, 2016.**

**BYRAM ONGAYA**

**JUDGE**