



REPUBLIC OF KENYA
EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAIROBI
CAUSE NO. 1865 OF 2014

(Before Hon. Lady Justice Hellen S. Wasilwa on 8th September, 2016)

JIMMY KINANJA WASIKE..... CLAIMANT

VERSUS

OXFORD UNIVERSITY PRESS E.A LIMITED.....RESPONDENT

RULING

1. The Application before Court is the one dated 14.7.2016 filed, under Certificate of Urgency and brought through a Notice of Motion pursuant to Rule 16 of the Industrial Court Rules 2010, Section 1A, 3A, 3B, and 95 of the Civil Procedure Act and any other enabling provision of the law.

2. The Applicant seeks for a stay of execution of decree and judgment herein pending the hearing and determination of the Appeal.

3. The Application is supported by the grounds:

1. That this Court has jurisdiction to grant the prayers sought.

2. That grant of the prayers sought shall not occasion any prejudice to the Respondent.

3. That the Applicant has filed an appeal against the judgment in Employment and Labour Relations Court Cause No. 1865 of 2014 Jimmy Kinanja Wasike vs. Oxford University Press E. A Limited.

4. Unless stay is granted, execution process can be commenced any time and the Applicant's property is in danger of being attached and auctioned before the hearing of the pending appeal. This process would occasion the Applicant substantial loss and irreparable damages.

5. Unless stay of execution is granted, the appeal will be rendered nugatory and a mere academic exercise and the Appellant will suffer substantial loss and damage.

6. That the Applicant has moved with utmost dispatch to file this application and prefer an appeal.

6. That the Applicant will abide with reasonable terms as to security for due performance of the

order.

4. The Application is supported by the Affidavit of one Beth Kajuju the Human Resources Manager of the Respondent/Applicant. She states that the Respondent is dissatisfied with the judgment of the Court delivered on 14.6.2016 and have filed an Appeal on 21.6.2016 annexed to the Application as BK1. She states that the Applicant has an arguable appeal which has been dispatched with utmost urgency.
5. The Respondent avers that the Claimant admitted during cross-examination that he is not in any gainful employment and therefore his financial means are unsustainable and is therefore unlikely to recover the decretal amount from the Respondent in the event the Appeal is successful.
6. The Applicant avers that it is ready to abide with reasonable terms of security for the due performance of the decree. They are ready to deposit the decretal amount in a joint interest earning account in a reputable bank or such other security as the Court may order.
7. The Respondent/Claimant did not file a Replying Affidavit but made oral submissions in Court stating that he was not served and the Verifying Affidavit was filed out of time.
8. He states that the Application should be dismissed as the Applicant will not suffer any loss and that the Application is only meant to cause delay.
9. Having considered the submissions of both parties, the issue for consideration is whether this application is merited by virtue of Order 42 Rule 6(2) of the Civil Procedure Regulations.
10. Under Order 42 Rule 6(2) of the Civil Procedure Regulations:

“(2) No order for stay of execution shall be made under subrule (1) unless:

(a) the court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay; and

(b) such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant”.
11. There are 3 conditions that need to be satisfied as above to enable the Court grant orders sought.
12. In case of the Applicants herein, the application was filed on 14.7.2016 after delivery of judgment dated 14.6.2016. This I can say was within reasonable period.
13. On the issue of substantial loss, the Respondents have submitted that they stand to suffer substantial loss unless the application is allowed.
14. They have submitted that the Respondent has no financial means as he is not in gainful employment and therefore they cannot recover anything if the appeal succeeds.
15. They have also submitted that they are ready and willing to deposit the decretal amount in a joint interest earning account in a reputable bank as the Court may order.
16. The Respondent’s only submission is that the Application is meant to cause delay.
17. Having considered the submissions and the law, I find that the Applicants have met the requirement of the law for grant of orders sought.
18. I will allow stay on condition that the Applicant releases ½ the decretal sum to the Respondent and the other half be deposited in an interest earning account held in the joint names of the Respondent’s Counsel and Claimant within 30 days. In default execution to issue.

Read in open Court this 8th day of September, 2016.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Claimant in person – Present

Miss Wangoi holding brief for Michuki for Respondent