

REPUBLIC OF KENYA

EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI

CAUSE NO. 1290 OF 2011

JUDITH ATIENO OMBOHO.....CLAIMANT

VERSUS

FAITH HOMES OF KENYA.....RESPONDENT

RULING

1. Application dated 10th March 2016 and filed on even date seeks to stay execution of the judgement of Nduma J delivered on 18th December 2015.
2. A notice of appeal was filed on 22nd December 2015. The applicant states that the intended appeal will be rendered nugatory if the stay of execution is not granted and that it is ready and willing to comply with such reasonable conditions the court may deem fit. That the claimant has no capacity to repay the Kshs 80,750 awarded to him.
3. The Respondent filed a replying affidavit on 27th June 2016 opposing the application on grounds that the application is an afterthought since it has been brought about four (4) months from the date the Notice of Appeal was filed.
4. That the grounds contained in the draft memorandum of appeal do not disclose an arguable appeal and the applicant has no possibility of success. The respondent prays that the court orders the applicant to deposit the decretal sum of Kshs 80,750 in court.

Determination

5. The award by the court comprised of unpaid salary for work done, payment in lieu of one month notice and compensation equivalent to six (6) months' salary for the unlawful and unfair termination of employment.
6. The claimant is a teacher by profession and the applicant has not demonstrated that she is a person of straw and would be unable to repay the decretal sum if the appeal was successful.
7. It is my considered view that the intended appeal will not be rendered nugatory if the order for stay of execution is not granted. The claimant deserves to enjoy the fruits of her judgement and the court therefore declines to exercise its discretion in favour of the applicant especially in view of the fact that the applicant does not state in the notice of motion and supporting affidavit that the intended appeal has good prospects of success.
8. Application is dismissed with costs.

Dated and delivered at Nairobi this 2nd day of September, 2016.

MATHEWS N. NDUMA

PRINCIPAL JUDGE