



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
CAUSE NO. 16 OF 2013
(Originally Nairobi Cause No. 72 of 2011)

FREDRICK NGARI MUCHIRA

HOWARD KIPKOECH KORIR & 98 OTHERS.....CLAIMANTS

v

PYRETHRUM BOARD OF KENYA..... RESPONDENT

RULING

1. On 31 May 2013, the Court delivered judgment in which it declared that the declaration of the Claimants positions as redundant was unfair.
2. The Court ordered the Respondent to pay the Claimants *severance pay, certain deductions made from wages, leave days, compensation and withheld salaries* (in relation to some of the Claimants).
3. After judgment, both parties filed applications for review dated 14 June 2013 and 24 June 2013. A ruling on the review applications was delivered on 19 July 2013, and a review was allowed to a limited extent. The parties were directed to file their computations of the sums awarded.
4. On 19 July 2013, Ongaya J he delivered a ruling in which he directed the parties to compute the sums payable to the Claimants.
5. On 30 October 2013, the parties entered a consent on a decretal sum of Kshs 61,919,493/-. The Court directed the parties to agree on settlement of the decretal sum. A decree was issued on 17 December 2013.
6. The decree was not satisfied, and the Claimants sought a garnishee order against the Respondent's accounts at Cooperative Bank of Kenya Ltd.
7. There were attempts at execution. Thereafter, several applications were filed and disposed of and the Claimants sought to execute by attachment.
8. On 19 November 2014, the Respondent filed a motion which is the subject of this ruling.
9. The motion sought a stay of execution and/or of warrants of attachments, and an order allowing the Respondent to pay the decretal sum through monthly instalments.
10. The grounds upon which the motion were anchored on were briefly, that the Respondent was in a precarious financial position; that the Respondent intended to settle the decretal sum by monthly instalments of Kshs 1,000,000/- upto February 2015 and thereafter by monthly instalments of Kshs 3,000,000/-; that the Respondent had already paid Kshs 18,000,000/-; that the Respondent owed farmers arrears, employees pension and salary arrears; the Respondent was yet to pay the Claimants in Cause No. 106 of 2013 some Kshs 76,878,555/-; that the Respondent risked closing down if stay was not granted; that the Respondent's main source of funds was the government

- and that the Respondent had been succeeded by the Agriculture, Fisheries and Food Authority.
11. The motion was supported by the affidavit of one Solomon Odera, Interim Head of the Pyrethrum and other Industrial Crops Directorate.
 12. He deposed that auctioneers had proclaimed and attached the Respondent's properties including the extraction and processing plants which constituted the Respondent's tools of trade.
 13. It was also deposed that the Respondent relies mainly on government funds for its operations. The affidavit also made similar assertions as those set out on the face of the motion.
 14. In submissions, Mr. Orege for the Respondent urged that the Respondent had had financial problems and had requested for funds from the government but this was not forthcoming and that attachment would lead to the closure of the Respondent.
 15. He also urged that the Court should balance the interests of the industry and the Claimants.
 16. The Claimants opposed the motion. A Replying Affidavit sworn by Howard Kipkoech Korir, one of the Claimants was filed.
 17. The deponent admitted that the Respondent had paid Kshs 18,000,000/- of the decretal sum but stated that the full decretal sum should have been paid by 1 November 2013. The failure to pay the whole amount, it was deposed was deliberate refusal.
 18. He further deposed that the Respondent was discriminating against the Claimants by choosing whom to pay first and the deponent made reference to Cause No. 106 of 2013, stating it was settled after the instant Cause.
 19. The deponent further deposed that the Respondent was of sound financial status with assets worth over Kshs 5,435,098,000/- and that the Respondent was not acting in good faith.
 20. Further, it was deposed that some of the Claimants had passed on and that the proposal to pay through instalments was unreasonable and a stay would be unmerited and injudicious.
 21. Mr. Bundi who appeared for the Claimants submitted that prayer 2 of the motion was already spent because no stay was granted at the *ex parte* hearing.
 22. He further submitted that prayer 3 of the motion was not based on an agreement between the parties and that the Respondent had been granted a 5 month stay of execution which had lapsed. The Respondent, he urged had an asset base of Kshs 5,400,000,000/- and could satisfy the decree and that there were over 100 Claimants and Kshs 1,000,000/- per month was not sufficient.
 23. He also submitted that a grant of stay would be an abuse of the court process and the Respondent was not acting in good faith and was discriminating against the Claimants. The Claimants, he contended were entitled to equity and 6 of them had died.
 24. Applications for stay of execution are ordinarily anchored on Order 42 of the Civil Procedure Rules. The Order is applicable to execution in the Employment and Labour Relations Court. The Order relates to stay pending appeal. The legal principles applicable in that context have been crystallized over time and are very clear.
 25. The Respondent in the instant motion has not sought to bring itself within the confines of Order 42, because it is not seeking stay of execution pending appeal.
 26. It has anchored its motion on Article 159 of the Constitution, Section 3A of the Civil Procedure Act, Order 51 rule 1 of the Civil Procedure Rules and all enabling provisions of the law.
 27. The Respondent did not address me on the relevance and materiality of Article 159 of the Constitution to the present motion.
 28. For the life of me, I am unable to determine whether the Respondent sought to rely on any particular provision of the cited Article or the whole Article with its 11 different provisions. The Article deals with alternative dispute resolution, not delaying justice, not having undue regard to procedural technicalities et cetera.
 29. Order 51 rule 1 is merely procedural and cannot be decisive in determining the substance of the Respondent's application.
 30. That leaves section 3A of the Civil Procedure Act. It provides that

Nothing in this Act shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.

31. My understanding of the section within the context of the present motion is that the Respondent should have either a statutory, legal, equitable or common law right or some tangible right capable

- of being protected by the court. And the right of the Respondent or any such other party must be considered, balanced and weighed against the competing statutory, legal, equitable or common law right of the other side.
- 32.If I understand the Respondent's case well, it is that it is facing troubled financial times and if the attachment is allowed to continue (if it is not allowed to pay through instalments), the whole industry (pyrethrum) would collapse. There would be other direct consequences such as on its current employees.
- 33.The Claimants have not denied that the Respondent majorly relies on government funding. They have also not denied that the Respondent has outstanding awards to settle arising from a different Cause. But they assert that they have a judgment and they are entitled to the fruits of the judgment. They have a crystallized right to the judgment and benefits accruing there from. The Respondent has an asset base of nearly Kshs 5,000,000,000/-.
- 34.An application such as this obviously raises very difficult and complex jurisprudential questions. Does the Court have jurisdiction to grant an order such as is sought now in the name of and in the quest to meet the ends of justice. Questions of public resources and services and rights of citizens accrued and crystallized through the judicial system must be balanced.
- 35.In my view, the Court has the inherent jurisdiction and I am fortified by the observation by Nyamu J (as he then was) in *Kenya Bus Services Ltd & 2 others v Attorney General* (2005) 1KLR 787 that

the inherent powers of the Court stem from the character or the nature of the court itself-it is regarded as sufficiently empowered to do justice in all situations.

- 36.In my view, in light of finite public resources involved and the public good, the Court has the power to make appropriate orders to meet the ends of justice.
- 37.Among the items attached, according to the Proclamation attached to the motion were a boiler whose value was estimated at Kshs 40,000,000/-, an extraction plant worth Kshs 19,000,000/-, a technofigo fridge worth Kshs 16,000,000/- and a *refrynarise* machine worth Kshs 42,000,000/-.
- 38.According to the report of the Auditor General for the financial year ended June 2013, (attached to the application) the Respondent was not on a sound financial footing.
- 39.There is real danger and risk that the pyrethrum sector in the country would suffer severely were the attachment allowed to proceed. The negative effects of such attachment on the public may be irreversible in the near future.
- 40.The Respondent had proposed to settle the balance of the decretal sum in monthly instalments of Kshs 3,000,000/-. Were the Court to accede to this, the decretal sum would be cleared in about 8 months.
- 41.This proposal in the view of the Court is reasonable except that the Respondent should make some substantial deposit.
- 42.I would therefore allow the motion on condition that the Respondent pays to the Claimants Kshs 15,000,000/- within 30 days from the date hereof and the balance be settled in monthly instalments of Kshs 3,000,000/- before the 7th of every month with effect from 7th May 2015.
- 43.Failure to comply or in default, execution to issue.
- 44.There is no order as to costs.

Delivered, dated and signed in Nakuru on this 23rd day of January 2015.

Radido Stephen

Judge

Appearances

For Claimants/Respondent Mr. Bundi instructed by Milimo, Muthomi & Co. Advocates

For Respondent/Applicant Mr. Orege instructed by Rodi Orege & Co. Advocates