



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS
COURT OF KENYA AT NAIROBI
CAUSE NO. 24 OF 2013

JARED JUMA.....PETITIONER

VERSUS

**KENYA BROADCASTING CORPORATION.....1ST
RESPONDENT**

**THE BOARD OF DIRECTORS KENYA BROADCASTING CORPORATION....2ND
RESPONDENT**

**CHARLES WAIHAKA WAIHENYA.....3RD
RESPONDENT**

Mr. Lempaa for the Petitioner

M/s Ogeto for 1st and 2nd Respondent

M/s Khisa for the 3rd Respondent

RULING

1. By a Notice of Motion dated 5th December, 2014, the Applicant prays for grant of a stay of execution of the Judgment of the court delivered on 5th December, 2014, pending the hearing and determination of the Appeal.
2. A Notice of Appeal dated 5th December, 2014 was filed on the same date.
3. The Application is founded on the grounds set out on the face of the Application as follows;
 - i. That, if a stay of execution is not granted then substantial loss may result to the Applicant as once he is removed from office he will suffer irreparable loss and damage
 - ii. That, the appeal has a reasonable chance of success and if execution is carried out it will render the appeal nugatory
 - iii. That, there has been no delay in bringing the application
 - iv. That the Respondent is willing to abide by any conditions and terms as to security as the court may deem fit to impose.

4. The Application is further supported by the Supporting Affidavit of Patia Khisa, Advocate for the Respondent which reinforces the stated grounds.
5. Interim orders for stay of execution were granted ex-parte on 8th December, 2014 pending the hearing of the Application *inter partes*.
6. The Applicant filed a further Supporting Affidavit dated 11th December, 2014 stating that he would be compelled to vacate office if the interim orders are not granted, a situation that will become irreversible should he succeed in the appeal in due course.
7. That the appeal is arguable and therefore the application satisfies the requirement for grant of stay.
8. The Application is further supported by the Supplementary Affidavit of Engineer Edward Musebe, the Chairman of the Board of Directors of the 2nd Respondent (KBC) seeking to demonstrate the rationale of the Age Limit of the Managing Director, Kenya Broadcasting Corporation.
9. It is his prayer that stay be granted because the Appeal has probability of success.
10. The Petitioner/Respondent filed Grounds of Opposition to the Notice of Motion dated 11th December, 2014 together with a list of authorities.
11. Further, the Petitioner filed a Replying Affidavit sworn on 15th December, 2014.
12. The gravamen of the opposition is as follows;
 1. The Applicant has failed to demonstrate irreparable harm or damage that may be occasioned should the stay not be confirmed.
 2. That the Applicant has equally failed to demonstrate that the Intended Appeal is arguable or has reasonable chances of success.
 3. That the appeal is frivolous, an abuse of the court process and is only calculated to buy more time for the Applicant to finish his second term even though he was appointed in violation of the Constitution.
 4. That no law bestows a right to the Applicant to earn a living as a public officer since this is a privilege to those who have met the mark.
13. The Petitioner/Respondent prays that the Application for stay be dismissed with costs.

14. **Determination**

The parties proceeded and filed written submissions restating largely their points of view and submitted legal authorities on the issues raised.

15. In the Court of Appeal, **Civil Application No. NAI 53 of 2010 (UR 33/2010) African Safari Club Limited versus S. Sate Rentals Limited**, the court identified two conditions to be satisfied by an applicant who desires a stay of execution pending an appeal as follows;

“.....two conditions to be satisfied by an applicant are first that it has an arguable appeal, in other words, the appeal is not frivolous and second, if a stay is not granted the appeal, if successful would be rendered nugatory. It is beyond question that these two requirements have served the cause of justice in this field of law for a long time and will continue to do so.”

16. The Court of Appeal went on to say that the two requirements are not exhaustive and are subject to the overriding objective of fair and expeditious dispensation of justice.
17. The court has considered the various issues raised against the Judgment of the court in the papers on

record and the submissions by the parties and has come to the conclusion that the Applicant has an arguable Appeal.

18. The Applicant is employed on a fixed term contract, and there is likelihood that the same may expire before the Appeal is heard and determined.

19. If the Appeal is successful, it may be impossible to put the Applicant in the position of leadership he held. This would render the Appeal nugatory.

20. On the other hand, should the Appeal fail, the Respondent will be bound to implement the decision of this court in all future appointments.

21. The Petitioner relied on the Supreme Court decision in **Gitarau Peter Munya V. Dickson Mwende Kithinji & 2 Others [2014] at page 15/19 and 16/19** and submitted that, since the matter involves a public institution (Kenya Broadcasting Corporation), public interest should be considered in determining the balance of convenience in the matter.

22. The court agrees with this proposition and finds that it is in public interest that the *status quo* be conserved to allow normalcy at Kenya Broadcasting Corporation pending the determination of the constitutionality or otherwise of the appointment of the Applicant as the Managing Director of Kenya Broadcasting Corporation by the court of Appeal.

23. In the event the Appeal is unsuccessful, Kenya Broadcasting Corporation will be well directed in its future appointments since the Applicant holds the position on a fixed term contract.

24. Accordingly, the Application for stay of execution pending the Intended Appeal succeeds.

Dated and Delivered at Nairobi this 6th day of February, 2015.

MATHEWS N. NDUMA

PRINCIPAL JUDGE