



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS
COURT OF KENYA AT NAIROBI
CAUSE NO. 565 OF 2012
GEOFFREY MWAKIO..... APPLICANT
VERSUS
THE KENYA BROADCASTING CORPORATION.....RESPONDENT

Mr. Saende for the Applicant/Respondent

Mr. Ogeto for the Claimant

RULING

1. The Applicant filed its Application on 13th January, 2013, seeking a stay of execution of the Judgment of the court delivered on 4th December, 2014 in favour of the Claimant/Respondent pending the hearing and determination of an Appeal.
2. A Notice of Appeal was filed on 9th December, 2014.
3. The Application is supported by an Affidavit of Paul Jilani the Corporation Secretary of the Respondent.
4. The Applicant has not yet filed the Appeal but has requested certified copies of the proceedings and Judgment.
5. The Applicant states that on 17th December, 2014, the Advocate for the Respondent served the Applicant with a notice to comply with the Judgment within 30 days.
6. That the Applicant has an arguable Appeal but is apprehensive that it will be rendered nugatory, if execution is effected pending Appeal.
7. The Applicant states; that the Respondent may only be entitled to damages set out in the Employment Act and not salary arrears up to the time of Judgment awarded by the Court Aquo.
8. That the Claimant was only entitled to half salary for the period of interdiction and not the full pay.
9. That no general damages ought to have been awarded.

10. That the Judgment debt is substantial and in the sum of Ksh.6,521,863.50 and if paid pending Appeal it would severely affect the operations of the Respondent.
11. That the Claimant is a man of straw and would not be able to refund this amount if the Appeal is successful.
12. The Application is opposed vide Ground of Opposition filed on 14th January, 2015.
13. The Respondent states that, no appeal has been filed within the 30 days permissible by the law.
14. That there is no explanation why the Appeal was not filed within 30 days.
15. That there is no decree for execution intended to be stayed hence the application is misconceived.
16. That in the event the court orders stay of execution, then it should direct the decretal sum to be deposited in court.
17. It is trite law that in an Application for stay of execution of a Judgment of court, the Applicant must establish that;
 - a. the intended Appeal is arguable
 - b. that if the order for stay of execution is not granted, the Intended Appeal will be rendered nugatory; and
 - c. that the application has been brought without undue delay.
18. The court has noted from the Affidavit of Paul Jilani that the Intended Appeal is mainly targeted at the quantum of Judgment and not the merits of the finding of unlawful termination.
19. In its Judgment of 9th May, 2014, the court ordered the Respondent to pay the Claimant general damages in the sum of Ksh.3 Million and in the alternative, re-engage the Claimant to his previous job and in addition pay him 12 months' salary in the sum of Ksh.311,604.00 as compensation for the unlawful dismissal.
20. This option was to be excised within 30 days.
21. The Applicant failed to take up the alternative and is therefore obliged to pay Ksh.3 Million as general damages in lieu of re-engagement. With respect to this part of the award, time started running from 9th May, 2014 when Judgment was delivered and the Notice of Appeal ought to have been filed within 30 days from the date of the Judgment.
22. The award on quantum delivered afterwards on 4th December, 2014, only related to computation of arrear salary from the date of suspension to the date of termination. This information was within the custody and knowledge of the Applicant being the employer but the Applicant opted not to compute and pay the Claimant/Respondent within 30 days as directed.
23. The Notice of Appeal filed on 9th December, 2014, was clearly filed out of time since the substantive Judgment of the court was delivered on 9th May, 2014, more than eight (8) months from the date the Notice was filed. However, the same was timeously filed with respect to the Quantification approved on 4th December, 2014, by the court.
24. To this extent, the Court grants stay of execution pending Appeal in respect of Ksh.3,525,863.30 arrears salary confirmed by the court on 4th December, 2014.

25. For the avoidance of doubt, the general damages in lieu of reinstatement in the sum of Ksh.3,000,000.00 awarded by the Court on 9th May, 2014 is not affected by this ruling and the Claimant is entitled to payment forthwith.

Dated at Nairobi this 23rd day of April, 2015.

MATHEWS N. NDUMA

PRINCIPAL JUDGE

Delivered by Hon. Hellen Wasilwa on 24th day of April, 2015.

In the presence of