



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
CAUSE NO. 68 OF 2014

REUBEN LUCHELELI SHIKURI.....CLAIMANT

v

ELDORET PACKERS LIMITED..... RESPONDENT

RULING

1. On 6 March 2015, the Court delivered judgment and awarded Reuben Luchelesi Shikuri (Claimant) accrued leave and underpayments all totalling Kshs 385,514/-.
2. Eldoret Packers Ltd (Respondent) was aggrieved and on 11 March 2015, it filed a motion under urgency seeking

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2. THAT there be a temporary order of stay of execution and/or further execution of the decree herein pending the hearing and determination of this application inters partes.

3. THAT there be a stay of execution and/or further execution of the decree herein pending the hearing and final determination of the appeal.

3. This motion is the subject of this ruling. Order 2 as sought is already spent.
4. The Respondent's case is that the Claimant is not in employment and if the decretal sum is released to him he may not be in a position to repay the same, were the intended appeal to succeed. Mr. Makuto for the Respondent hence submitted that the Respondent would suffer irreparable loss. He added that the Respondent was ready to furnish security.
5. One of the grounds on the face of the motion was, and the Court was also informed that a Notice of Appeal had been filed.
6. Ms. Kerubo opposed the motion. She relied on a replying affidavit sworn by the Claimant and filed in court on 13 March 2015. The Claimant also filed authorities on 13 March 2015.
7. According to the Claimant, the Respondent had not demonstrated that it stood to suffer substantial loss were the order for stay be declined and that the motion was only meant to delay him from realising the fruits of the judgment.
8. He further contended that the Notice of Appeal annexed to the motion was improper as it had not been signed by the Respondent or the Deputy Registrar.
9. The Claimant also deposed that he would be in a position to refund the decretal sum because he was in gainful employment with Rai Plywood (K) Ltd.
10. The principles applicable to grant of stay pending appeal are now legion and trite.
11. Before discussing the principles it is noteworthy that there should be an appeal. Is there an appeal pending from the judgment of this Court delivered on 6 March 2015?
12. The Court has perused the record. There is no Notice of Appeal. What is on record is a document

- referenced Notice of Appeal annexed to the supporting affidavit to the present motion and filed in Court on 11 March 2015. The said annexure is not signed by the Respondent's Advocate on record or at all. It has not been endorsed by the Deputy Registrar.
13. In my view, the said Notice of Appeal is no notice of appeal for lacking the Respondent's signature. Further, it is doubtful in my mind whether a Notice of Appeal being such a primary document can be lodged formally with the Court as an annexure to an affidavit.
 14. The logical conclusion arising from the foregoing is that where there is no pending appeal, deciphered from a formally lodged Notice of Appeal, the Court has no power to grant stay of execution.
 15. That should dispose of the matter, but were the Court wrong, then, a brief discussion on whether the Respondent has met the test for grant of stay of execution pending appeal would be in order.
 16. The main grounds tendered by the Respondent for seeking stay of execution is that it stands to suffer substantial loss because the Claimant would not be able to refund the decretal sum were the appeal to succeed. And that it is willing to provide security.
 17. The Claimant on his part demonstrated through a pay slip and was not challenged that he had secured alternative employment.
 18. In my view, the fact that a decree holder may not be able to refund the decretal sum were an appeal to succeed, is not a good enough reason without more for granting stay of execution pending appeal. And I would endorse the dicta by Emukule J in *Cosmas Kipkoech Sigei v Madrugada Ltd & Ar* (2010) eKLR that

a stay will not be made on the ground that the decree holder is a pauper, and will therefore be unable to refund the decretal sum if paid to him....

19. In the instant case, the Respondent has not shown it would suffer substantial loss were the stay order be declined. As Odunga J held in *Republic v The Commissioner for Investigations and Enforcement ex parte Wananchi Group Kenya Ltd* (2014) eKLR, and which I endorse,

the issue of substantial loss is a crucial issue in such applications that it ought to come out clearly in the supporting affidavit....it is therefore not sufficient to merely state that the decretal sum is a lot of money and the applicant would suffer loss if the money is paid. In an application of this nature, the applicant should show the damages it would suffer if the order for stay is not granted.....

20. Although the Respondent offered to furnish security, the motion must be declined as unmerited. It is dismissed with costs to the Claimant.

Delivered, dated and signed in Nakuru on this 24th day of April 2015.

Radido Stephen

Judge

Appearances

For Claimant Ms. Kerubo instructed by Maritim Omondi & Co. Advocates

For Respondent Mr. Makuto instructed by Nyairo & Co. Advocates

Court Assistant Nixon