



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU

CAUSE NO. 118 OF 2014

EDWIN MANDELA SHUJA.....CLAIMANT

v

YAKO SUPERMARKET LTD.....RESPONDENT

RULING

1. On 6 February 2015, the Court found and held that the termination of the Claimants services was unfair and awarded him *one month pay in lieu of notice, accrued leave and 4 months wages as compensation*, all totalling Kshs 90,902/-

2. The Respondent appears to have been aggrieved with the judgment and on 16 March 2015, it filed a motion under certificate of urgency seeking

1. (spent)

2. (spent)

3. THAT this Court be pleased to enlarge time within which the Applicant is to lodge a Notice of Appeal against the judgment of this court and/or in the alternative the Notice of Appeal filed herein out of time and without leave of the court be deemed to be within time with leave of the court.

4. THAT there be an order for stay of execution and/or further execution of the decree of this court pending the hearing and determination of this application inter partes pending the hearing of the intended appeal.

5. THAT the costs of this application be in the appeal.

3. The Court certified the motion urgent and directed that it be served for *inter partes* hearing on 24 March 2015.

4. On the hearing of the application, the Claimant's counsel informed the Court that the Claimant's papers were being filed and therefore he was not ready. The Court directed that the grounds of opposition be filed and the motion do proceed to hearing.

5. When the motion was called at 11.05am, the Claimant's counsel was not in Court and the Court heard the Respondent (The grounds of opposition were filed around lunch time and the Court has considered them).

6. In regard to the prayer for enlargement of time, Ms. Odwa for the Respondent submitted that the

Respondent's Director Nipul Ramesh Shah was taken ill and was put on 2 weeks rest by a doctor and therefore he could not give the Respondent's Advocates instructions on whether to appeal or not.

7. The affidavit in support of the motion had similar depositions.

8. Ms. Odwa cited the case of *Patrick Onguso Nasibi v National Water Conservation & Pipeline Corporation & Ar* (2014) eKLR.

9. A Notice of Appeal from a judgment of this Court should be filed within 30 days of the pronouncement of the decision. The judgment herein was delivered on 6 February 2015, and the Notice of Appeal should have been filed on or before 5 March 2015.

10. The Respondent did not comply hence the present application filed on 17 March 2015, some 12 or so days after the lapse of the prescribed time.

11. Section 7 of the Appellate Jurisdiction Act gives this Court the discretion to grant leave or enlarge time for the filing of the Notice of Appeal.

12. The Respondent has given sufficient reasons as to why a Notice of Appeal was not filed in time. The Respondent's Director was taken ill. Further, the current application was filed without inordinate delay.

13. The Court will therefore grant leave and enlarge the time for filing a Notice of Appeal.

14. The Respondent also seeks stay of execution pending the hearing and determination of the intended appeal.

15. The principles for the grant of stay of execution pending appeal are now trite. The principles are derivatives from Order 42 of the Civil Procedure Rules.

16. Order 42 rule (6)(2) of the Civil Procedure Rules has outlined the conditions upon which stay of execution pending appeal may be granted. Briefly, these are that the applicant should satisfy the Court that substantial loss may be occasioned; that the application should be made without unreasonable delay and lastly, provision of such sufficient security by the applicant.

17. Courts have on various occasions discussed and distilled the principles arising out of Order 42 rule 6 of the Civil Procedure Rules. Such cases are *Mukuma v Abuoga* (1988) KLR 645, *Jotham Simiyu Wasike & another v Jackson Ongeru & 4 others* (2013) eKLR, *Tabro Transporters Ltd v Absalom Dova Lumba* (2012) eKLR and *Anthony Kiberenge Kamau v Kibuchi Wamunyi & 3 others* (2010) eKLR.

18. The Respondent asserted that the Claimant did not have sufficient assets to cover the decree *in the event execution proceeds and the appeal succeeds* and that the Claimant may disappear with the money to an unknown place were execution to proceed.

19. It is plausible that the Claimant may not be in a position to refund any monies paid to him as ordered by Court.

20. But this alone is not a good enough reason by itself to grant stay of execution pending appeal.

21. The evidence tendered during the hearing of the main Cause by the Claimant was that he was working.

22. The Court is not satisfied that the Respondent will suffer any substantial loss were stay of execution pending appeal be declined.

Conclusion and Orders

23. From the foregoing, the Court orders

- a. That leave be granted and the time for filing of a Notice of Appeal be enlarged, and a Notice of Appeal be filed on or before 15 April 2015.
- b. That the prayer for stay of execution pending appeal be dismissed.

24. Each party to bear own costs.

Delivered, dated and signed in Nakuru this 10th day of April 2015.

Radido Stephen

Judge

Appearances

For Claimant: Chepkwony & Co. Advocates

For Respondent: Ms. Odwa instructed by Nyairo & Co. Advocates