



REPUBLIC OF KENYA

EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO. 2428 OF 2012

(Before Hon. Justice Hellen S. Wasilwa on 17th June, 2015)

HARON NJOROGE GACENGECHI.....CLAIMANT

VERSUS

THE ADMINISTRATOR

CONSOLATA INSTITUTE OF PHILOSOPHY.....RESPONDENT

RULING

1. The application before court is the one dated 17/4/2015 wherein the Respondents Applicants came to court through a Notice of Motion brought under Articles 159, 162 (2), 164 (3) of the Constitution, Sections 12(3) (i) & (viii), 17(1) & (2) of the Industrial Court Act 2011 Rule 16 & Rule 27 of the Industrial Court Procedure Rules and all the enabling provisions of the law and the inherent powers of the Court.
2. The Applicants seeks orders that:
 1. ***THAT the application be certified as urgent and be heard ex parte in the first instance.***
 2. ***THAT pending the hearing and determination of this application interpartes, this Honourable Court be pleased to issue temporary stay of execution of the Judgment delivered on 11th March 2015 in Industrial Cause No. 2428 of 2012 and all consequential orders there to.***
 3. ***THAT pending the lodging, hearing and determination of an intended appeal herein, there be a stay of execution of the Judgment delivered on 11th March 2015 in Industrial Cause No. 2428 of 2012 and all consequential orders thereto.***
 4. ***THAT the costs of this application follow the results of the intended appeal.***
3. The application is based on the following grounds:
 1. ***That the Applicant is aggrieved by the decision of the Honourable Court delivered on 11th March 2015 and has lodged a Notice of Appeal against the whole of the said decision as per Rule 75 of the Court of Appeal Rules.***
 2. ***That the Applicant has also requested for typed copies of the proceedings in the trial court for purposes of appeal.***

3. *That the Claimant has commenced execution proceedings by forwarding a draft decree for approval.*
4. *That the Applicant is reasonably apprehensive that unless this application is heard as a matter of urgency and the orders sought herein granted, the Claimant shall move to execute the judgment, an action that would occasion great injustice and prejudice to the Applicant.*
5. *That the Applicant has an arguable appeal with very high chances of success as per the annexed draft memorandum of appeal.*
6. *That the Applicant is apprehensive that in the event the Applicant's appeal is successful; the Claimant will not be able to refund the decretal sum of Kshs.896,473/=.*
7. *That the execution of the judgment will result in the loss of the subject matter of the Applicant's intended appeal being and award of the sum of Kshs.896,473/=. Thus, the Applicant's appeal will be rendered nugatory and merely academic if it succeeds.*
8. *That upon receipt of the typed copy of the judgment it became imperative that the Applicant Counsel deliberates on the same with the Applicant before making any decisions on whether to pay or appeal.*
9. *That on deliberation, the Applicant decided to exercise its right of appeal by lodging a notice of appeal.*
10. *That it is in the best interest of justice that the stay of execution sought herein be granted pending the hearing and determination of appeal against the judgment.*
11. *That the Applicant is ready to comply with any directions of the court.*

and is supported by the affidavit of Geraldo Martinelli the Assistant Administrator of Respondent deponed to on 15/4/2015 herein.

4. The Claimant Respondent on their part filed a replying affidavit on 27/4/2015 opposing this application. They further submitted that the application is an abuse of the court process, incompetent and ought to be dismissed. They aver that the application is meant to frustrate him in getting the fruits of his judgment which he has waited for since 2011.

He stated that he is able and willing to refund the entire decretal amount if the Court of Appeal ruled against him as he is engaged in business in this country and it is not impossible to trace his assets.

5. I have considered submissions of both parties. Under 0.42 Rule 6(2) of the Civil Procedure Rules:

“No order of stay of execution shall be made under sub-rule (1) unless:

- a. *The Court is satisfied that substantial loss may result to the Applicant unless the order is made and that the application has been made without unreasonable delay, and*
 - b. *Such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the Applicant”*
6. From the provision of this law, stay will only be granted if the conditions above are met. The Applicant have not demonstrated the substantial loss they stand to loose if the orders sought are not granted. They have however approached court without unreasonable delay. They didn't propose to offer any security as expected.
 7. I will therefore allow the stay on condition that the decretal sum is deposited in a joint interest earning account held in the joint names of Counsels for the parties on record within 30 days. In

default execution to issue.

Read in open Court this 17th day of June, 2015

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

No appearance for Respondent

No appearance for Claimant