



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT MOMBASA

ELRC CAUSE NO. 116 OF 2014

KWEKWE MWAKELA.....CLAIMANT

VERSUS

KRYSTALLINE SALT LTD.....RESPONDENT

RULING

INTRODUCTION

1. On 19/12/2014, this court entered judgment for payment of employment benefits to the Claimant herein and the other Claimants in the other suits which were consolidated with it. The aggregate award made for all the Claimants was kshs.2,219,191.77 plus costs and interest.
2. The Respondent (applicant) was dissatisfied with the said Judgment and filed a Notice of Appeal to challenge it. In the meanwhile she brought the Notice of Motion dated 9/2/2015 seeking stay of execution of the impugned Judgment pending the out-come of the intended appeal. The grounds upon which the motion stands are:
 - (a) **The applicant has an arguable appeal with high probability of success.**
 - (b) **The said appeal will be rendered nugatory and the applicant will suffer irreparable damage if stay is denied.**
 - (c) **The applicant is ready and willing to deposit such sum as security and in the manner the court orders.**
 - (d) **The application has been brought without unreasonable delay.**
3. The Motion is supported by the affidavit sworn by Hasmita Patel on 9/2/2015. The gist of the affidavit is that an appeal has been preferred, and certified typed proceedings and Judgment applied for. That the applicant is apprehensive that unless stay is granted the decretal sum will not be recovered from the Claimants if the appeal succeeds after execution.
4. The Motion has been opposed by the Claimants who have filed grounds of opposition dated 24/2/2015. The gist of the Claimants case is that the law upon which the Motion is brought does not entitle the applicant to the order sought. That the motion has been brought after inordinate delay. The claimant is however agreeable to the decretal sum being deposited in a joint account between the Advocates for the two sides. The Motion was disposed by written submissions.

ANALYSIS AND DETERMINATION

5. After considering the submissions, there is no dispute that an appeal has been preferred against the Judgment of this court dated 19/12/2014. The issue for determination is whether the court should order stay of execution of the impugned Judgment pending the outcome of the appeal.

Threshold For Stay Pending Appeal.

6. Order 42 rule 6(2) of the Civil Procedure Rules bars this court from ordering stay of execution pending appeal unless

(a) **The application is brought without inordinate delay.**

(b) **The Applicant demonstrates that he will suffer substantial loss unless stay is ordered, and**

(c) **The applicant is willing to give security as the court may order.**

7. The Judgment was delivered on 19/12/2014 and the court went for vacation upto the first week of February 2015. The motion was brought on 10/2/2015 and the court agrees with the applicant that the motion was not brought after inordinate delay. The court also seems no difficulty in the third requirements for grant of stay because the applicant has offered to deposit the decretal sum as security if the court directs that as a condition for stay.

8. The only hurdle that the applicant failed to jump is that of proving that she has not that she will suffer substantial loss if stay is not granted. Such loss must be proved by evidence in affidavit. All what Hasmita Patel deposed in her affidavit is that:

“5. THAT according to the applicant record on the Respondent the Applicant is reasonably apprehensive that if the decretal amount is paid over to the Respondent, then would be in no position whatsoever to refund the same if the intended appeal is successful.

6. THAT if the decretal amount is paid over to the Respondent, the intended Appeal will be rendered nugatory and the Applicant will suffer irreparable loss and damage.”

The foregoing sentiments by the applicant do not satisfy this court that the over 60 Claimants would not be able to refund their respective awards which range between KShs.20,000 and KShs.34,400 in the event the appeal succeeds after the execution. The applicant having failed to discharge the burden of proving the inability to repay the Judgment debt by the Claimants, renders the motion a sham for failure to meet the threshold for stay pending appeal.

DISPOSITION

9. For the reasons stated above the Notice of Motion dated 9/2/2015 is dismissed with costs.

Dated, signed and delivered this 10th day of July 2015.

O. N. Makau

JUDGE