



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT AT MOMBASA
CAUSE NUMBER 361 OF 2013

BETWEEN

MAXWELL MASAI JOSEPH.....
CLAIMANT

VERSUS

SYNERGY FREIGHT AND LOGISTICS LTD.....
RESPONDENT

RULING

The Court delivered an Award in favour of the Claimant (Employee), against the Respondent (Former Employer), on the 29th May 2015. The Award is for a total sum of Kshs. 275,559 comprising terminal dues and compensation for unfair termination.

The Court ordered the full amount be paid within 30 days of the delivery of the Award.

There was no compliance within the 30 days. Instead, the Respondent filed a Notice of Appeal on 22nd July 2015, intending to appeal at the Court of Appeal.

On 22nd July 2015, the Respondent filed an Application seeking Stay of Execution of the Award, pending Appeal.

The Court granted an interim order for stay, upon the Respondent depositing the sum awarded in Court.

The Claimant filed his Replying Affidavit on 31st August 2015.

The Application was heard in the presence of both Advocates on the 3rd September 2015.

The Respondent submits it has satisfied all the conditions relevant in considering grant of the orders of stay of execution. It has deposited the sum awarded in Court. The Notice of Appeal has been filed. The Draft Memorandum of Appeal demonstrates there is an arguable Appeal, and the Claimant would suffer no prejudice, if stay is granted.

The Claimant's position is that the Respondent has not shown the Appeal is not frivolous; and that execution would render the Appeal nugatory. Both limbs must be demonstrated. It has not been shown the Claimant is incapable of repaying the sum awarded, in event the Appeal succeeds. The Claimant relies on the Court of Appeal Ruling in *Freight-In-Time Limited v. Rosebell Wambui Muthee [2014] e-KLR* in support of his position.

The Court Finds:

1. The Draft Memorandum of Appeal does not persuade this Court there is an arguable Appeal with the possibility of success. The Court is of the view stay of execution of decrees granted in favour of Employees, should be granted only where recondite grounds of appeal exist.
2. The Respondent has not shown that the Claimant would be incapable of repaying the sum awarded, in event the Appeal succeeds.
3. There was delay in filing of the Notice of Appeal and the Application for Stay of Execution. The 30 day period granted by the Court within which the sum awarded was to be paid, lapsed, without the Respondent making any motion.
4. Up to now, 4 months after the Award was read, the Respondent has not applied for the proceedings of the Court: it would seem the Respondent does not intend to exercise its right of Appeal expeditiously. A long-drawn out appeal process, with the orders of stay in place, will definitely not be in the interest of the Employee. Such a process, with the sum awarded in the hands of the Employee, would on the other hand prejudice neither the Employee nor the Employer. The pace of processing and hearing the intended Appeal, is largely determinable by the intended Appellant.
5. Lastly, the Respondent's right of appeal is not defeated by payment of the sum awarded to the Claimant. Relying on the Court of Appeal Ruling in ***Freight-In-Time Limited v. Rosebell Wambui Muthee***, the Court Orders:-
 1. ***The Application by the Respondent dated 21st July 2015, seeking Stay of execution of the Award is rejected.***
 2. ***The sum awarded, and deposited in Court, shall be released to the Claimant forthwith.***
 3. ***Costs to the Claimant.***

Dated and delivered at Mombasa this 9th day of October, 2015

James Rika

Judge