



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS

COURT OF KENYA AT NAIROBI

CAUSE NO. 56 OF 2014

JOSEPH KAMAU & 468 OTHERS CLAIMANTS

VERSUS

G4S SECURITY SERVICES (KENYA) LIMITED RESPONDENT

RULING

1. The Respondent / Applicant filed notice of motion dated 29th June 2015 seeking for an order that;

A stay of proceedings be granted pending the hearing and determination of the intended appeal against the order made on 15th May 2015.

2. The Application is premised on the grounds that;

the Respondent/ Applicant being dissatisfied with the ruling delivered on 15th May 2015 has filed a notice of appeal and intends to appeal to the Court of Appeal;

that the Respondent / Applicant has good grounds of appeal and has high chances of success;

that the intended appeal will be rendered nugatory unless the proceedings herein are stayed;

that 464 of the 469 claims are time barred. That granting an order for stay of proceedings will save costs and execution of any possible award which costs will otherwise be wasted if the Respondent / Applicant is successful in the appeal;

3. The Application is opposed vide the Replying Affidavit of Joseph Kamau, the 1st Claimant on the grounds that the Application seeks to defeat the principal of just and expeditious disposal of cases provided under Section 3 of the Employment and Labour Relations Act, 2007.

4. That there has been inordinate delay in bringing this Application, the ruling having been rendered on 15th May 2015 and the Application was brought one month later on 14th June 2015.

5. That the intended appeal has no possibility of success because the ruling of the Court was based on a sound interpretation of Section 90 of the Employment Act, 2007.

6. That the intended appeal is not likely to be rendered nugatory if the stay is not granted and the appeal is eventually successful because the Applicant will be awarded costs of the suit before the lower Court and the Appeal Court.

7. That the Respondent will be entitled to appeal once the final Judgment has been made.

Determination

8. In the **High Court of Kenya, at Nairobi, Civil Appeal 48 of 2008, Wanyiri Kihio V. Surinderal Singh Syan & 2 others.** Hon. H M. Okwengu J. stated the following in dismissing an application for stay of proceedings pending appeal;

“For the Applicant to succeed in this Application, he must satisfy this Court that if the order for stay of proceedings is not granted, he will suffer substantial loss The Applicant will have a right of appeal against the Judgment of the Trial Magistrate and will be at liberty to raise the issue of competence of the suit in the appeal.”

9. Similarly, the Applicant herein will have opportunity to institute an appeal against the Judgment of this Court. If the intended appeal on the ruling of the Court on the issue of limitation of time is successful, the Applicant will suffer no loss as he will be entitled to payment of costs in the Appeal Court and this Court.
10. A stay of proceedings derogates from the overriding objective of hearing and determining cases expeditiously.
11. The balance of convenience is in favour of allowing the case to proceed to its conclusion.
12. I therefore find that no sufficient cause has been established to justify the grant of an order for stay of proceedings pending appeal.
13. For the above reasons, I find no merit in this Application and dismiss it accordingly.

Dated and Delivered this 2nd day of October, 2015.

MATHEWS NDERI NDUMA

PRINCIPAL JUDGE