



REPUBLIC OF KENYA

EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO. 275 OF 2013

(Before Hon. Justice Hellen S. Wasilwa on 7th December, 2015)

DANIEL KIPROP AYABEICLAIMANT

VERSUS

PARBAT SIYANI CONSTRUCTION LIMITEDRESPONDENT

RULING

1. The Application before court is the Notice of Motion dated 25/5/2015. This Application was filed by the Respondent Applicants herein who seek orders that:

- 1. The matter be certified urgent and be heard ex parte in the 1st instance.***
- 2. Pending the hearing and determination of this application interpartes, the Court do order stay of execution of the Judgment delivered on 28th April 2015.***
- 3. Pending the hearing and determination of the intended appeal, the Court be pleased to order stay of execution of the Judgment delivered on the 28th April 2015.***
- 4. Costs of this Application be provided for.***
- 5. Such other orders as the Court may deem fit to make.***

2. The Application is supported by the annexed affidavit of Purity Makori Advocate deponed on 25/5/2015 and on the grounds that:

- 1. The Court delivered Judgment on 28th April 2015 in favour of the Claimant for Kshs.1,146,196.65.***
- 2. The Respondent is aggrieved with the said Judgment and desires to appeal the same.***
- 3. The Respondent has filed a Notice of Appeal and applied for certified copies of the proceedings and Judgment.***
- 4. The Respondents intended appeal has merit and if the Application is not allowed, it will be rendered nugatory.***

5. If the Respondent pays the award, chances of recovery are minimal as the Claimants have no known place of abode or assets on which the Respondent can recover in the event the intended appeal is successful.

6. The Respondent is willing to abide to all the conditions that the Court may deem fit including depositing the money in Court.

3. The Claimant Respondents opposed this Application. The Respondent filed their replying affidavit on 15/6/2015. They aver that this application is meant to be a delaying tactic in his quest for justice. They also aver that the Application does not have grounds for demonstrating an actual and imminent execution and is premature and based on conjecture given that no decree has been extracted for execution.

4. The Respondents have also deponed that the Application is an abuse of the Court process and the Applicants have not demonstrated prima facie grounds of appeal.

5. They however aver that it would be in order for the Applicant to deposit the money to the Court. They want the entire application dismissed with costs.

6. I have considered the averments of both parties. Under Order 42 Rule 6 of the Civil Procedure Rules:-

“(1) No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except in so far as the Court appealed from may order, but the Court appealed from may for sufficient cause order stay of execution of such decree or order, and -----

(2) No order for stay of execution shall be made under subrule (1) unless:-

(a) The Court is satisfied that substantial loss may result to the application 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” .

7. The key considerations in granting such as Order of Stay therefore are:- sufficient cause and security. In terms of sufficient cause the Applicant have submitted that they have preferred an appeal. They also state that the appeal has merit and it would be rendered nugatory if the Application is not allowed.

8. In this Court’s view, the Applicants have not demonstrated that their appeal has merit. They have averred that they are just dissatisfied with the Judgment. That in itself is not enough as they are supposed to show sufficient cause to earn such an order.

9. However, on security, they are willing to abide by this Court’s conditions for which the Respondents concur.

10. So that the Applicants are allowed to exhaust their channels in seeking justice, I will allow stay but this is subject to the Applicants depositing in this Court the entire decretal sum within 30 days. In default execution to issue.

Dated and delivered in open court this 7th day of December, 2015.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Nyagoro for Respondent – Present

No appearance Claimant