



REPUBLIC OF KENYA
EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAIROBI
CAUSE NO. 1254 OF 2010

KUDHEIHA WORKERS UNION.....CLAIMANT

VERSUS

GERALD MWANGI.....RESPONDENT/APPLICANT

CORRECTION OF JUDGMENT

Under Rule 33 Industrial Court (Procedure) Rules 2010

As part of the decision of Kosgey J. (as he then was) on 15th December 2011 housing of 2,500 x 24 months was granted. This sum is Kshs. 60,000/- and not 112,211 as appears on the Judgment. I correct the sum to read 60,000/- in place of 112,211. There is no order as to costs for correction of errata as the mistake was that of the Court.

Orders accordingly.

Dated and delivered at Nairobi this 9th day of February 2015

Nzioki wa Makau

JUDGE

REPUBLIC OF KENYA

IN THE INDUSTRIAL COURT OF KENYA AT NAIROBI

CAUSE NO 1254 OF 2010

KUDHEIHA WORKERS.....CLAIMANT

VS

GERALD MWANGI.....RESPONDENT

RULING

1. On 15th December 2011, Kosgey J (as he then was) delivered an award in favour of Victoria Wangui, the grievant, herein in the sum of Kshs. 215,920. The Respondent filed a Notice of Appeal on 9th January 2012 and a Notice of Motion for stay of execution of the award on 16th March 2012.
2. For some reason, the Respondent's application was not heard until 9th December 2013. Mr. Kagura holding brief for Mr. Njengo for the Respondent told the Court that attempts to fix the application for hearing had been hampered by unavailability of the court file.
3. On the other hand, Mr. Njiru for the Claimant told the Court that the application was served on the Claimant in October 2013.
4. In the case of *Equity Bank Limited Vs West Link MBO Limited [2013] ECLR* the Court of Appeal held that an appeal does not operate as a bar to execution of judgment. A party seeking stay of execution pending appeal must therefore demonstrate that they are not using the appeal to delay justice. They must not only show that they have an arguable appeal but also that they have come to court without undue delay.
5. As held by Gikonyo J in the case of *Tarbo Transporters Ltd Vs Absalom Dova Lumbasi [2012] eCLR* stay of execution pending appeal is granted at the discretion of the court upon demonstration by the applicant that the application has been brought without unreasonable delay.
6. In the case before me, the Respondent filed a Notice of Appeal on 9th January 2012 and an application for stay of execution pending appeal on 16th March 2012. Apart from communication from Counsel for the Respondent to the Deputy Registrar of the Industrial Court to supply some documents and fix the application for hearing, there was no evidence of any efforts made by Respondent to prosecute his application.
7. Even worse, the application was served on the Claimant in October 2013, close to one and a half years after filing. There was no explanation for the inordinate delay to serve and prosecute the application and the Court drew the conclusion that the Respondent filed the application to prevent the grievant from reaping the fruits of her award. Stay of execution is therefore declined with costs to the Claimant.

Orders accordingly.

DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 18TH DAY OF FEBRUARY 2014

LINNET NDOLO

JUDGE

In the Presence of:

.....*Claimant*

.....*Respondent*