REPUBLIC OF KENYA

IN THE INDUSTRIAL COURT OF KENYA

CAUSE NO. 1809 OF 2011

(Before D.K.N. Marete)

NOEL GEORGE KHAABA ……..……CLAIMANT

Versus

WANANDEGE HOUSING CO-OP SOCIETY LIMITED……RESPONDENT

RULING

This is an application by way of Notice of Motion dated 21st January, 2014 in which the claimant/applicant seeks the following orders of court;

1. *Stay orders be granted.*

2. *Leave to appeal be granted.*

3. *Costs hereof be paid by the Respondent.* and is based on the following grounds;

1. *The judgment was erroneous by being based on uncorroborated and false testimony of the only witness of the Respondent.*

2. *The judgement of the Court failed to frame an issue canvassed on both parties which had weight of evidence availed and no decision was made on it.*

3. *The judgement had misapprehension of facts which rendered decision to be erroneous*.

The application is supported by the affidavit of Noel George Khaaba sworn on the same date.

The respondent opposes the application and lays down the following grounds of opposition;

1. ***THAT*** *the application is defective, and as such, is an abuse of the process of this court.*
2. ***THAT*** *the application is not grounded on any provision in law and therefore has no basis in law.*

3. ***THA****T there is no draft Memorandum of Appeal, that can enable this court to asses its chances of success.*

4. ***THAT*** *the application has no basis in both law and fact, and lacks merit.*

5. ***THAT*** *the application is spurious and vexations and lacks direction.*

6. ***THAT*** *the applicant has not given an understanding for costs by making a deposed in court.*

7. ***THAT*** *there is nothing to be stayed.*

8. ***THAT*** *the application is bad in law, lacks merit and is spurious & vexations and should be dismissed with costs.*

On 23rd January, 2014, the court, upon perusal of the application ordered as follows;

1. ***THAT*** *this application be served onto the Respondent forthwith not later than the close of the day on 29-1-2014.*

2. ***THAT*** *the Respondent be and is hereby ordered to make, file and serve a response within seven days of service*

3. ***THAT*** *this application be heard on 6-2-2014 at 900 hours.*

The matter was to come again for hearing on 6th February, 2014 when the parties agreed to dispose of the same by way of written submissions. The claimant's written submissions dated 10th February, 2014 were filed on the same date whereas the respondent's dated 12th February, 2014 were filed on the said date.

In his submissions, the claimant/applicant largely touched on the substance of the matter and the applicant's perception of the conduct of the proceedings and eventual outcome. The supporting affidavit and the written submissions do not, or at all, pursue or follow the application.

The issues for determination are;

i. Whether the orders sought for are valid.

ii. Whether the applicant was within the provisions of the law in seeking leave of court to appeal.

iii. Whether the applicant invoked any provisions of the law while making this application.

In his written submissions, the respondent submits the following under these heads. He ends up rubbishing the claimant/applicant's application and finds it as untenable as it is formless and out of the provisions of the law on the subject, or at all.

i. ***Whether the orders sought for are valid.***

Your Honour, in the application dated 21st January 2014, the applicant indicated that he is seeking for a stay of order given by this court. It is obvious that while this Honourable Court was delivering its judgment on 20th December 2013, it only delivered its judgement against the applicant without giving any other orders in addition.

There is nowhere in its ruling did the court give an order which now the applicant wants its execution to be stayed. It is therefore illogical for the applicant to apply for stay of orders.

It is our humble submission that this applicant especially this clause dealing with stay is vexatious and not valid as it is only meant to waste this courts time because by making such an application the applicant ought to have been aware that there was indeed no order that he really wanted to be stayed.

ii. ***Whether the applicant was within the provisions of the law.***

As of right, the right of appeal is an automatic relief and can therefore be exercised by any person who is no (sic) satisfied by a courts decision.

In this case, the applicant herein, after the court ruled that he did not have any case against the respondent decided that the best thing he had to do was to apply and be granted permission by court to appeal. What the applicant forgot was that he only had to go to a higher court and make his appeal and this needed no such permission unless he was out of time.

Your honour the applicant therein, is totally misguided in both law and fact by seeking such orders. The court does not give permission before an aggrieved property can appeal.

It is a total waste of this courts time to bring such an application before a competent court which has other matters to handle. It is therefore our humble submissions that the court finds this application a being without merit and deny the applicant the orders sought.

iii. ***Whether the application is grounded on any law?***

The application as framed is bad in law and totally lacks merit.

The applicant while making this application did not quote any provision of the law that he was relying on. The application is just as plain as any other draft as it is made without giving the respondent or even this court what law to rely on while reaching its decision.

Apart from the applicant making an application to stay orders that are not really there, he also does not give the respondent what he intends to rely on in the said application. The law is wide, and has very many provisions in that without being specific, the court cannot just grant an order without being told as to what the prayer is based on.

The respondent submits that the orders for stay of execution as sought are invalid as there are no orders calling for performance or execution. This court merely dismissed the claim and did not issue any further orders. This prayer borders of vexation and should therefore be dismissed.

On the application for leave to appeal, the respondent submits that an appeal is an automatic right and therefore not necessary to apply for the same. The court does not issue such orders. The search for such orders is a demonstration of the claimant's subdued comprehension of the law and leaves everybody harassed and awakened.

The application is also plain and not grounded on any law. The respondent submits that this is an omission and leaves the respondent and the court bewildered as to which direction the orders sought are derived. The court cannot merely grant orders from the wilderness or even willows. The respondent puts it thus;

The law is wide, and has very many provisions in that without being specific, the court cannot just grant an order without being told as to what the prayer is based on

I entirely agree with the submissions and grounds of opposition by the respondent. I need not repeat the same. This application lacks an iota of seriousness. It is not an investment in a conscious search for the truth or even fairness. Inasmuch as I empathize with the applicant, a lay person who has all along conducted his case in person, I must confess that sense dictates things are done per custom. One cannot dare indulge in areas grey without consultation and come out clean. This creates confusion and clumsiness with disastrous consequences to the party and many others. This must be discouraged in situations like we now face.

I am therefore inclined to dismiss this application with costs to the respondent.

Delivered, dated and signed the 9th day of April, 2014.

D.K. Njagi Marete

JUDGE

Appearances:

1. Claimant in person.

2. Mr. David Rabala instructed by Maangi, Otieno & Company Advocates for the respondent.