

REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA
AT NAIROBI

CAUSE NO. 399 OF 2011

BEATRICE NYAWIRA MUNENE

REGINA KIVONDO.....CLAIMANTS

VERSUS

BATA SHOE COMPANY (K) LIMITED.....RESPONDENT

RULING

1. The application is the Notice of Motion application dated 17th February 2014 by the Respondent/Applicant. It seeks an order of stay pending hearing and determination of the Review Application. It was submitted by Mr. Masese for the Applicant that the Review raises substantial issues and that if the execution proceeds but Court comes to a different finding the Review will be rendered nugatory. He submitted the Claimant would not suffer any prejudice.
2. The Claimant/Respondent was opposed to the Application and had filed grounds dated 13th March 2014. The main attack was that the Respondent/Applicant was guilty of laaches and did not deserve the orders sought. Mr. Nyabena for the Claimant/Respondent submitted that the judgment was on 6th July 2013 and the Review application was filed on 17th February 2014. This, it was submitted was an afterthought and was only sought after execution commenced.

It was submitted a party should come to Court in good time.

3. The Respondent/Applicant argued that the format used was an oversight and sought amendment. The late filing was attributed to discussions which had been ongoing as well as the shift of the Court from NSSF to Milimani Commercial Courts. He stated the court will not be sitting in appeal over its judgment if it reviews the case. He submitted that the court could order a deposit in Court if the sum was substantial.
4. The principles for grant of stay are well established. There should be either a proposed and viable appeal or review; secondly there should be a tender of security or offer to furnish security required. The application for stay also should be made timeously. In this case it's admitted that the application was filed rather late. It is not disputed that the Court moved from NSSF to Milimani Commercial Courts. There is no evidence of the efforts to trace the file if at all it was missing. The Review at perusal seems like it has substance but it is in evaluation not one the court thinks will succeed. The cause was determined in July 2013, the Respondent now suddenly states there was new evidence they would wish to adduce.

Under Rule 32 the provisions are clear. The evidence should have been unavailable to the party seeking to rely on it. There has been no tender of security nor an offer to tender it except for a casual remark that if the amount was 2 million or so the Claimant would say "deposit it in Court".

5. From the foregoing the Application is devoid of merit and is fit for dismissal. Without delving into the execution, if parties agree to hold off execution and one turns around and proceeds then that would amount to sharp practice which must be deprecated. As the application is dismissed

with costs the Claimant will be at liberty to proceed to execute for the decretal sum
Orders accordingly.

Dated and Delivered at Nairobi this 2nd day of April 2014

NZIOKI WA MAKAU

JUDGE