



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA

AT NAIROBI

CAUSE NO. 1764 OF 2011

JACOB OKAL ODERO.....CLAIMANT

VERSUS

THE KENYA INSTITUTE OF MANAGEMENT LIMITED.....RESPONDENT

RULING

Before me for determination is the Respondents Notice of Motion dated 14th August 2013 and filed under certificate of urgency on the same date. The application is supported by the affidavit of DAVID MUTURI, the Respondent's Executive Director. The application seeks the following orders: -

1. That the Honorable Court be pleased to grant an Order for stay of execution of the decree herein relating to an award and /or judgment of benefits and compensation to the claimant delivered on 16th July 2013 pending the hearing and determination the Appeal lodged against the same.
2. That the cost of this application be provided for.

The application is grounded on the following:-

1. That the Respondent having been dissatisfied with the award of Kshs.1,843,735.00 made herein on the 16th day of July, 2013 in favour of the claimant lodged a Notice of Appeal on the 25th July 2013.
2. That amount is payable within 30 days from the 17th day of June 2013.
3. That if execution is levied against the Respondent, there will be substantial Loss and Injustice to it.
4. That this application has been made without unreasonable delay.
5. That the Respondent is ready and willing to provide security for the due performance of such decree or Order as may ultimately be binding on the Respondent.

Annexed to the application is a Notice of Appeal dated 24th July 2013 and filed in Court on 25th July 2013, a letter to the Deputy Registrar dated 31st July 2013 seeking decree and certificate of costs and a Memorandum of Appeal.

The application is opposed by the Claimant. He filed a Replying Affidavit sworn on 12th November

2013. The main grounds upon which the Claimant opposed the application are that what was granted by the court was already earned and deserved being payment for days worked, earned leave and termination notice. That the court in addition awarded him compensation. That his prayers for gratuity and damages were rejected. He further deponed that the intended appeal has poor chances of success and that the Respondent failed to demonstrate that should the appeal succeed he would be unable to refund the decretal sum. He prayed that the application be dismissed.

The application was argued on 18th March 2014. Ms. Muendo represented the applicant/Respondent while Mr. Katwa represented the Claimant.

Ms. Muendo relied on the grounds on the face of the application, the supporting affidavit and the following decided cases:-

1. C.A. NO. NAIROBI 6 OF 1979 : BUTT V RENT RESTRICTION TRIBUNAL
2. C.A. NO. NAIROBI 107 OF 1993 : KENINDIA ASSURANCE CO.LTD V PARTICK MUTURI
3. C.A. NAIROBI 1 OF 2007: NATION NEWSPAPER LTD V. PETER BARAZA RABANDO.

Ms. Muendo submitted that the Respondent has an arguable appeal and the court should exercise its discretion in the Respondents favour. That the court ought to balance the rights of both the decree holder and the judgment debtor.

Mr. Katwa for the Claimant submitted that the Claimant and his family have suffered embarrassment due to lack of funds following the termination of his employment. That the judgment only granted the Claimant notice, leave, balance and days worked which he is entitled to, that should the court grant stay it should not be in respect of the amounts already earned by the Claimant, that the Respondent had failed to grant Certificate of Service until the Claimant threatened to go to court for contempt and the court should take the Claimant's conduct into account when exercising discretion in it's favour. Mr. Katwa further submitted that there is no arguable appeal, that mere disagreement with the judgment is not a ground of appeal and that the Respondent has not demonstrated that the Claimant has no ability to pay should the judgment be overturned.

Mr. Katwa relied on the replying affidavit and on the following authorities:-

1. Scott & Another V Kago & 2 others [1987] KLR 508.
2. In RE MUGE [1991]KLR 51
3. SILVERSTEIN V CHESSONI [2002] IKLR 867
4. KETER & 6 OTHERS V KIPLAGAT 2 OTHERS [2004]2 KLR 159.

I have considered the application together with the grounds in support thereof and the supporting affidavit. I have also considered the Replying affidavit, the oral submissions of both counsel and the authorities cited by the parties.

Grant of stay pending appeal is a well trodden path as demonstrated by the authorities cited by the parties. The purpose of a stay is to preserve the subject matter so that the appeal should not be rendered nugatory should it be successful. The applicant must therefore have an arguable appeal. The court must balance the right of the decree holder to benefit from the fruits of his judgment and the right of the applicant to appeal when dissatisfied by a decision of a court.

In the judgment which is the subject matter of this application, the decision was in two parts. The first part was a confirmation of terminal benefits already offered by the Respondent as pleaded in the response to the claim and in the testimony of RW2. I believe this part cannot be the subject of appeal as the

Respondent is bound by its pleadings and the evidence adduced in court. I therefore order that the Respondent pays off this portion of Shs. 479,335.71 which is composed of 3 months' pay in lieu of notice, 35 leave days and 8 days worked in February 2011.

The second part is the compensation in the sum of Shs.1,364,400. Although this sum is a discretionary decision of the court, the Respondent has a right of appeal and I shall not hinder it from exercising that right.

For the foregoing reasons I make the following orders:-

1. The sum of Shs. 479,335.71 be paid to the Claimant together with interest at Court rates from date of judgment up to the date of payment.
2. The balance of Shs. 1,364,400 together with Shs. 421,755 being deposit for costs be deposited in an interest bearing account in the joint names of Katwa & Kemboy Advocates and S.K Muendo & Co. Advocates pending the hearing and determination of the intended appeal.
3. The costs of the present application shall be costs in the appeal.

Orders accordingly.

Dated and delivered this 5th day of May, 2014.

HON. LADY JUSTICE MAUREEN ONYANGO

JUDGE

Read in the presence of

Jaoko holding brief for Katwa for Claimant

Ms.Muendo for Applicant/Respondent