



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA

CAUSE NO. 1186 OF 2012

**KENYA UNION OF PRINTING, PUBLISHING, PAPER MANUFACTURERS & ALLIED
WORKERS..... CLAIMANT**

VERSUS

JAM GRAC INVESTMENTS.....

..... **APPLICANT**

RULING

By a notice of motion dated 18th November 2013 filed under certificate of urgency the Applicant/Respondent seeks the following orders:-

1. That this application be certified urgent and service be dispensed with in the first instance.
2. That there be a temporary stay of execution of the judgment and decree of this Honourable Court issued on the 20th June, 2013 pending the hearing and determination of the application interpartes.
3. That there be a stay of execution of the judgment and consequential decree issued on the 20th day of June 2013 pending the hearing and final determination of the intended appeal against the said judgment.
4. That the costs of this application be provided for.

The application is supported by the affidavit of JAMES KAMAU MUTURA sworn on 18th November 2013 and on the following grounds:-

- a. That the applicant is aggrieved by the judgment of Hon. Lady Justice Maurine Odera.
- b. That the applicant has filed a notice of appeal against the judgment by the Honourable Court on 20th day of June 2013.
- c. That the intended appeal is arguable and has overwhelming chances of success.
- d. That if the orders sought are not granted, the Applicant is likely to suffer irreparable loss since his goods may be attached and sold and it will be difficult to recover the same if the appeal succeeds since the Respondent is not a person who can repay.
- e. That the Applicant is prepared to abide by a reasonable order for the furnishing of security as may be made by this Honourable Court.
- f. That the application has been made timeously without any due delay since the decree had not been issued.

The Claimant filed a memorandum of objection to the application on 29th January 2014. In the objection it raises the grounds that there are no arguable facts in the application by the Respondent, that the application is brought 5 months after judgment was delivered, that no appeal has been filed, that the

application is intended to deny the Claimant his rights and to subject him to undue suffering.

In the written submissions in response to the grounds of objection the applicant submits that it has filed a notice of appeal, that should the application not be granted the applicant will suffer irreparable loss as its goods would be attached in execution of the decree, that should the appeal succeed it would be difficult to recover such property, that the Claimant is not a person of means, that the application was made without delay and that the intended appeal has overwhelming chances of success as it involves the suing of the wrong party, which issue was raised in the main suit but was not addressed by the court and finally that the applicant is prepared to provide security for costs.

I have considered the application, the objections and the submissions by the applicant.

The principles of granting stay of execution have been stated in many cases. In the case of **Transport Workers Union Kenya V. African Safari Diani Adventure [2013]eKLR** Justice Rachido restated the principles as follow, that the order is discretionary, that the applicant may suffer substantial loss, that the application is made without unreasonable delay and or provision of security as the court may impose. In addition, the applicant must demonstrate that it has an arguable appeal.

In the present case there is no draft memorandum of appeal. The only grounds mentioned by the applicant is that the Claimant sued the wrong person as the Respondent is not a registered company capable of being sued. In his testimony in court Mr. James Kamau Mutura who has sworn the affidavit in support of the application herein admitted in his sworn testimony that he was the owner of the Respondent Company and that he employed the Claimant. This being the case, the ground of appeal has no chance of success.

The Respondent filed the application for stay on 18th November 2013 while the judgment was delivered on 20th June 2013. The Respondent alleges that the file was missing from the court registry. However, there is no evidence to show that the Respondent ever applied for a copy of the judgment or proceedings before filing this application herein. The inordinate delay of five months is therefore not explained.

In the grounds in support of the application the Respondent states that it intends to appeal against the decision of Lady Justice Maurine Odero. There is no judgment by such judge in this file.

From the foregoing, I find that the applicant has not demonstrated any seriousness to file appeal against the award in this case. The time for filing appeal lapsed without the applicant applying for proceedings and judgment, meaning that it has no grounds upon which to apply for extension of time to appeal.

I find that the applicant has not demonstrated that it has an arguable appeal, is guilty of delay and is so careless as to refer to the wrong judge in its application.

I find no merit in the application and dismiss the same with costs.

Read in open Court this 6th day of **May**, 2014

HON. LADY JUSTICE MAUREEN ONYANGO

JUDGE

In the presence of:

Ms. Waweru holding brief for Kinga for Respondent

No appearance for Claimant