



REPUBLIC OF KENYA

IN THE INDUSTRIAL COURT OF KENYA AT KISUMU

CAUSE NO. 15/2013

(Before Hon. Justice Hellen Wasilwa on 2 July, 2014)

EBRAHIM OCHIENG OTHUON & 2 OTHERS CLAIMANTS

-VERSUS-

CHEMILIL SUGAR CO. LTD RESPONDENTS

RULING

The application before court is one dated 12.6.2014. The same was brought by the applicants herein under a certificate of urgency through a notice of motion filed under S. 12(3), S. 16 and 20 of the Industrial Court Act, Rules 27(1)(a) and (g) of the Industrial Court (Procedure) Rules, Section 3 & 3A of the Civil Procedure Act and enabling provisions of law. The respondent applicants seek orders of stay of execution of this court's award delivered on 30th April 2014 and all consequential orders thereto pending the hearing and determination of the respondent applicants appeal.

The application is grounded on the annexed affidavit of **John Muasya** the Regional Manager, Federation of Kenya Employers seized of this matter on behalf of the applicants herein and on the following grounds:-

1. That the court delivered its Ruling on 30th April, 2014 wherein it directed the respondent/applicant to pay Ksh 5,896,617.48 as house allowance.
2. That the respondent/applicant is aggrieved with the said Ruling and has preferred an appeal against the whole of the said judgment by filing a Notice of Appeal as required by Rule 75 of the Court of Appeal Rules.
3. That the claimant/respondents have commenced the execution process and the respondent/applicant is apprehensive that the same may proceed to the detriment of the respondent/applicant.
4. That the respondent/applicant has a good and arguable appeal on merits as per its attached draft memorandum of appeal.
5. That unless this application is heard and determined urgently, the claimant/respondent may levy execution against the respondent/applicant to its detriment and great prejudice as the claimant/respondent has no known sources of income and would thus not be in a position to reimburse the respondent/applicant in the event that it appeal succeeds.
6. That the respondent/applicant is ready to abide by any orders of this Honourable Court as to security.
7. That it is in the best interest of justice that a stay of execution herein be granted pending the hearing of this application and the respondent/applicant's intended appeal.
8. That there has been no inordinate delay in bringing this application.

It is the applicants contention that they are ready to pay to the respondents the portion of the claim consented to save for the issue of house allowance for which they have preferred an appeal.

The respondents opposed this application. They filed their replying affidavit on 20.6.2014 sworn by **Kenneth Oduor Amondi** counsel for claimants herein. It is the respondents position that the applicants should not be granted the orders they have sought as they have not come to court with clean hands. The reason is premised on the fact that they have not settled what was consented to to-date and they they have not demonstrated that the appeal is arguable. They also argue that the applicants have not brought the application under proper provisions of law.

Upon hearing the parties submissions, the issue for determination is whether the application is properly before court and if so whether the prayers sought can be granted.

On 1st issue, the application is brought under S. 12(3), 16 and 20 of Industrial Court Act 2011. Section 12(3) deals with this court's jurisdiction. S. 16 states this court has power to review it's orders. Rule 27(1) (a) and (g) of the Industrial Court (Procedure) Rules 2010 deals with decisions of the court and Rule 27 (1)(g) states that the court can grant any order to meet the ends of justice.

By coming to court under S. 12 of Industrial Court Act 2011, the applicants are in order. However, the relevant rule for filing stay of execution is as provided for under the Civil Procedure Act as indicated under Rule 31(2).

However going by Rule 27(1)(g), this court can grant any order to meet ends of justice. Despite the mix-up by the applicants in citing the wrong sections of the law in their pleadings, they fall back in Article 159(2) (d) of the Constitution. I will therefore find that the application is properly before court.

On what prayer to grant, I find application has merit and I order there be stay of execution on the condition that:-

1. **The entire decretal amount as consented before court be paid out to claimants within 2 weeks from today.**
2. **½ of the contested amount be deposited in a joint interest earning account held in joint name of counsel on record/representative of applicants within 30 days. In default execution to issue.**

HELLEN WASILWA

JUDGE

2/7/2014

Appearances:-

Amondi for claimant respondents present

Muasya for Applicant respondents

CC. Wamache