



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA

AT NAIROBI

CAUSE NO. 412 OF 2012

JOHANA ODIGO APINDI CLAIMANT

VERSUS

PANESAR'S KENYA LTD RESPONDENT

RULING

1. The Respondent / applicant filed this application dated 22nd May 2014, seeking inter alia orders for stay of execution of the judgment of the Court dated 9th May 2014.
2. The Application is opposed by the Claimant / Respondent by way of replying Affidavit and grounds of opposition filed on 27th May 2014.
3. The law applicable to granting of orders of stay pending appeal is well settled in Kenya. The Application is enjoined to prove to the Court that;

1. It has an arguable appeal;
2. If stay is not granted, the appeal will be rendered nugatory in the event that the applicant succeeds or substantial loss will be suffered;
3. The application is brought without inordinate delay.

4. The applicant filed a notice of Appeal dated 9th May 2014. The Appeal was therefore noted without any undue delay.

The Applicant has not attached a draft memorandum of appeal to enable the Court evaluate whether or not the Appeal noted is arguable or not.

5. In the supporting affidavit of Mr. Timothy Naeku, the advocate in conduct of this matter, he does not allude to any grounds or reasons why the Respondent / Applicant is dissatisfied with the judgment of the Court.

6. The Court is in the circumstances unable to evaluate whether or not the applicant has an arguable appeal or not.

Instead, the Applicant emphasis the issue that the appeal will be rendered nugatory if the stay is not granted and the applicant eventually succeeds in its Appeal.

7. The Court disagrees with this view given that the Applicant is a large construction company involved in the construction of high end Hotels such as Serena, Polana Hotel in Maputo, Mozambique and the subject of the award is Kshs.1,437,300/= being payment for work done by the Claimant/Respondent on behalf of the Applicant in Mozambique, for which work the Court has found the Claimant / Respondent was only paid Kshs.90,000/=.

The court also found that the Claimant is a carpenter of long and good standing and has an ongoing carpentry business.

8. The Applicant has not demonstrated that the Claimant/ Respondent would be unable to repay the sum awarded to him in the event the Appeal is successful. To the contrary, the Claimant/ Respondent has ably demonstrated in the Replying Affidavit that the balance of convenience favours that he be paid the sum which is long overdue for services rendered to the Applicant/Respondent company.

Accordingly, the Applicant has failed to establish the preliquisites of granting a stay of execution and the Court dismisses the Application with costs to the Claimant / Respondent.

Dated and Delivered at Nairobi this 1st day of October, 2014.

MATHEWS N. NDUMA

PRINCIPAL JUDGE