



REPUBLIC OF KENYA

Industrial Court of Kenya

Cause 1291 of 2012

1. SIMON MUNGATA

2. PATRICK ABWOVA

3. PAUL JUMA

4. FRANCIS NDANYI MUSERA

5. CHRISTOPHER MUCHERA ILAHALWA

6. STEPHEN MUKABANA

7. AUGUSTINE NDAMBUKI

8. PATRICK SABWA CLAIMANTS

VERSUS

PARBAT SIYAN CONSTRUCTION LTD.....RESPONDENT

RULING

By a Notice of Motion dated 7th January 2013, the Respondent/Applicant seek the following orders:-

1. **THAT** this Honourable Court be pleased to certify this application as urgent and the same be heard ex-parte in the first instance.
2. **THAT** the Honourable Court be pleased to enlarge time for filing the Notice of Appeal herein.
3. **THAT** pending the hearing and determination of this application there be stay of execution of the judgement dated 16th November 2012.
4. **THAT** there be a stay of execution of the judgement dated 16th November 2012 and all consequential orders thereto pending the hearing and determination of the Appellants' Appeal.
5. **THAT** costs of this application be paid by the Respondent.

The application is supported by the affidavit of **PURITY K. MAKORI**, an advocate with the firm of **KELVIN MOGNI Advocates** and on the following grounds:-

- a) **THAT** judgement herein was entered on the 16th November 2012 without notice being issued to the Respondent.
- b) The Court mentioned the matter on the 12th of October 2012 and confirmed that all submissions were on record and issued a Judgement date for 9th November 2012.
- c) **THAT** on the said 9th of November 2012 Counsel for the Respondent went to Court only to find a notice on the registry that Justice Onesmus Ndambuthi had been sent on transfer and all pending judgements will be delivered on notice.
- d) There was no notice that was ever received by Counsel to the Respondent on the judgement date and only came to know about it when advocate for Respondent wrote a letter on the 17th of December 2012 demanding payment of Kshs.771,750 within 7 days.
- e) **THAT** the Respondent is aggrieved with the judgement and intends to appeal but is now out of time because Counsel for the Respondent was not informed of the date of judgement.
- f) **THAT** there is danger that the Claimants may move to execute any time now since the 7 days issued in the letter from their advocate has already expired.
- g) **THAT** the Respondent prays that the Notice of Appeal be deemed as filed and the Court does grant a stay of execution pending appeal of the orders of this honourable Court issued on the 16th November 2012.
- h) If the application is not allowed and execution not stayed the applicants Appeal will be rendered nugatory and the Respondent herein will suffer irreparable loss.
- i) The Respondent is ready to provide any such fair security as to this Court may deem fit and just.
- j) And on other reasons to be adduced at the hearing of this application hereof.

The application was first heard ex-parte by my brother Hon. Justice Nduma on 8th January 2013 who issued the following orders:-

1. **THAT** the application dated 7th January 2013 be and is hereby certified as urgent and heard ex-parte in the first instance.
2. **THAT** time for filing the Notice of Appeal be and is hereby enlarged.
3. **THAT** there be stay of execution of the judgement dated 16th November, 2012 pending the hearing and determination of the application.
4. **THAT** there be a stay of execution of the judgement dated 16th November, 2012 and all consequential orders thereto pending the hearing and determination of the Appellants' Appeal.
5. **THAT** the Applicant serves the papers on the Respondents.
6. Inter partes hearing on 11th February 2013 at 9.00 a.m.

The parties appeared before me on 6th March 2013 and argued the application and I reserved the ruling for 4th April 2013.

I have considered the grounds in the application and the supporting affidavit, the replying affidavit and the oral submissions of both Counsels made in Court. I have however noted that all the prayers in the

Notice of Motion were granted by Hon. Mr. Justice Nduma on 8th January 2013 when the Respondent argued the application before him ex-parte with the exception of the prayer for costs.

In the circumstances, I cannot make any further orders in the application as this would constitute a review of the orders already granted by Hon. Mr. Justice Nduma to the Applicant.

I therefore refer the file back to Hon. Mr. Justice Nduma for further directions.

Orders accordingly.

Read in open Court and signed on this 15th day of March, 2013.

HON. LADY JUSTICE MAUREEN ONYANGO

JUDGE.

Mr. Kirimi h/b for Mr. Nyabena for

In the presence of: _____ Claimant

No appearance for the

_____ Respondent