



REPUBLIC OF KENYA

Industrial Court of Kenya

Cause 258(N) of 2009

JAMES KINYUA & 17 OTHERS.....RESPONDENTS/ CLAIMANTS

VS

DR. HASMUKH K. RAWAL

DR. VIRENDRA K. RAWAL

T/A UNIVERSAL GROUP OF

COLLEGES.....APPLICANTS/ RESPONDENTS

Mr. Baabu for Applicants/Respondents

Mr. Kamau for Respondents/Claimants

RULING

This matter has a long history. An *ex parte* Judgment was entered by the Court in September 2009, in which the court found that the Applicant/Respondent having been duly served by Registered post at their last known address, which the Applicants/Respondents continues to use todate, the court was entitled to hear the matter in their absence which it continued to do and found in favour of the Respondents/Claimants.

The Award of the Court was partly settled by the Applicants/Respondents save for two items namely; payment in lieu of one month's notice pay which the Applicants/Respondents allege they had already settled and payment of severance pay for each completed year of work.

The Respondents/Claimants confirm that the total sum due in respect of these two items is Kenya Shillings 1.6 million and pray that the same be settled forthwith.

The Applicants/Respondents brought an application before me on 4th October, 2010 on a Certificate of Urgency seeking to Stay the Execution of the said judgment delivered on 17th September, 2009 by Justice Chemmutut and that they be allowed to file their defence to the claim.

The Court found in a ruling delivered on 10th December, 2012 that the said application had no merit and dismissed it with costs. The present application is for stay of execution pending appeal against my ruling aforesaid.

The Applicant submits that the Intended Appeal has good prospects of success in that the court observed that the court award in respect of severance pay may have been granted without jurisdiction in that the payment was backdated 17 years and may therefore, have been statutory barred. That the court erroneously noted that it could not deal with the matter because there was no application for review of the judgment of the court before it, but was seized with an application to set aside the judgment of the court which was entered into *ex parte* for non-attendance of the Applicants/Respondents.

This in my mind was a finding of fact based on the record of the court. I reiterate that the said application brought on 4th October, 2010 discloses no grounds whatsoever to review the judgment of 17th September, 2009 but merely sought to have it set aside and the Respondent be allowed to defend it.

The court found no good reason for setting aside the judgment and is of the considered view that the Respondents/ Claimants have waited for too long to enjoy the fruits of their award, and finds that the balance of convenience favours the Respondents/Claimants. This view is fortified by what the court considers low prospects of success of the Intended Appeal, the Applicant having failed to demonstrate that the same is arguable.

The Respondents/Claimants had worked for the Applicants/Respondents for very many years and it is in the interest of justice that they realize their terminal benefits in terms of the judgment of the court of 17th September, 2009.

Accordingly, the Application for Stay of Execution is dismissed with costs. The decretal amount is limited to a sum of 1.6 million Kenya Shillings plus costs.

It is so ordered.

DATED and **DELIVERED** at Nairobi this 17th day of May, 2013.

Mathews N. Nduma

PRINCIPAL JUDGE- INDUSTRIAL COURT