



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA

AT NAIROBI

CAUSE NO.975 OF 2016

MUGUMO MUNENE.....CLAIMANT

VERSUS

NATION MEDIA GROUP LIMITED.....RESPONDENT

RULING

The respondent, Nation Media Group Limited filed application dated 24th November, 2020 under the provisions of section 12(3)(i) and (viii) of the Employment and Labour Relations Court Act and Rules 17 and 32 of the Employment an Labour Relations Court (Procedure) Rules, 2016 and Order 42 Rule 6 of the Civil Procedure Rules and seeking Orders that;

1. *Spent.*
2. *Spent.*
3. *Spent.*
4. *This court be pleased to order a stay of execution of the judgement delivered on 11th November, 2020 pending the hearing and determination of an intended appeal filed by the respondent in respect of the judgement delivered on 11th November 2020.*
5. *Costs of this application be provided for.*

The application is supported by the annexed affidavit of Sekou Owino and on the grounds that on 11th November, 2020 the court delivered judgement and awarded the claimant the sum of ksh.3,844,110 being 10 months' salary as compensation for unfair termination of employment plus costs. Aggrieved, the respondent filed Notice of Appeal and there are good grounds and high chances of success as the judgement of the court was in effect rewriting the employment contract between the parties in the finding that the claimant was treated unfairly in a redundancy. The respondent is willing to deposit security of the decretal sum. Unless stay of execution is granted the respondent shall suffer loss and damage whereas the claimant will not suffer any prejudice as his interests shall be secured by the security advanced.

In his affidavit Mr Owino avers that he is the head of legal and has authority to support the application by the respondent and avers that following judgement herein the respondent has filed Notice of Appeal and to sure the subject of the suit seek stay of execution.

The respondent is willing to furnish a bank guarantee from a reputable bank in the sum of ksh.3, 844,110 and to abide any other conditions which this court may impose as a condition for the grant of stay of execution.

In reply, the claimant his Replying Affidavit and avers that upon delivery of judgement on 11th November, 2020 the court allowed the respondent 30 days stay of execution and the instant application is filed prematurely as there is no imminent risk of execution and where he moves to have the costs assessed the respondent shall be served and allowed to attend.

The claimant also avers that he filed suit in the year 2016 and has waited this long to find justice. The respondent has filed the instant application to keep him from enjoying the fruits of his judgement but where the court is moved to allow the application the decretal sum should be deposited in a joint interest earning account held by both parties and the application by the respondent to furnish a bank guarantee

is selfish and prejudicial to the claimant as he will lose out on interest he rightfully deserves from the awarded sum and on this basis the application should be dismissed with costs.

Both parties made oral submissions.

Determination

Execution proceedings before this court are regulated under the provisions of 17 and 32 of the Employment and Labour Relations Court (Procedure) Rules, 2016 and application of Order 42 Rule 6(2) under which, an applicant seeking stay of execution of a decree or order pending appeal is obliged to satisfy the following conditions (a) that substantial loss may result to the applicant unless the order is made, (b) that the application has been made without unreasonable delay, and (c) that such security as the court orders for the due performance of such decree or order as may ultimately be binding on the applicant has been given as held in the case of **Antoine Ndiaye versus African Virtual University [2015] eKLR**.

Upon judgement herein execution for 30 days. November, 2020.

on 11th November, 2020 the court allowed for stay of The respondent filed the instant application on 25th Order 42 Rule 6(2) applies where there is a pending appeal. In this case the respondent has filed a Notice of Appeal serving as an intention to file an appeal but no appeal exists.

The core of an application for stay of execution is for an applicant to state what loss it shall suffer where stay is not granted. Even where the application is filed without delay and one is willing to deposit a security the loss which may arise if the subject of the suit is not secured is imperative as held in **James Wangalwa & Another versus Agnes Naliaka Cheseto [2012] eKLR** that;

No doubt, in law, the fact that the process of execution has been put in motion, or is likely to be put in motion, by itself, does not amount to substantial loss. Even when execution has been levied and completed, that is to say, the attached properties have been sold, does not in itself amount to substantial loss under Order 42 Rule 6 of the CPR. This is so because execution is a lawful process. The applicant must establish other factors which show that the execution will create a state of affairs that will irreparably affect or negate the very essential core of the applicant as the successful party in the appeal ... the issue of substantial loss is the cornerstone of both jurisdictions. Substantial loss is what has to be prevented by preserving the status quo because such loss would render the appeal nugatory.

In the affidavit of Mr Owino and in the submissions made, the respondent has not addressed what loss or substantial loss it shall suffer if execution is allowed to proceed. Save to file the instant application, there is no other effort demonstrated as having been taken to proceed on appeal as stated that there are good grounds to be advanced before the appellate court.

The court finds no good basis to stay execution in this case.

The claimant should be allowed to enjoy the fruits of his judgement.

Accordingly, the court finds no merit in the instant application dated 24th November, 2020 seeking stay of execution of judgement delivered on 11th November, 2020 and the same is hereby dismissed. Costs to the claimant.

DELIVERED IN OPEN COURT AT NAIROBI THIS 28TH DAY OF JANUARY, 2021.

M. MBARU

JUDGE

In the presence of:

Court Assistance: Okodoi

..... and