



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU

CAUSE NO. 202 OF 2013 (Originally Nairobi Cause No. 4 of 2012)

| | |
|----------------------------------|----------------------|
| NDUTA KEZIAH KIEMA | 1st CLAIMANT |
| PRISCA LUBYA | 2nd CLAIMANT |
| MARY MBONE SHISUNGU | 3rd CLAIMANT |
| ACLEAN CHEPKEMOI RONO | 4th CLAIMANT |
| EMA VALENTINE WAIYAKI | 5th CLAIMANT |
| RHODA CHEPNGETICH KOECH | 6th CLAIMANT |
| DOROTHY FLORENCE SHISUNGU | 7th CLAIMANT |
| AMITABAN ASHOKUMAR PATEL | 8th CLAIMANT |
| SHALIN WASON | 9th CLAIMANT |
| MARY OGADA | 10th CLAIMANT |
| JOYCE KEMUNTO OIRA | 11th CLAIMANT |

V

LIONS NIRU SHAH

**(CHAIRMAN, LIONS SCHOOL MANAGEMENT
BOARD)**

RESPONDENT

RULING

1. On 21 November 2014, this Court pronounced judgment in favour of the Claimants in which it found their dismissals procedurally unfair and awarded each of them pay in lieu of notice and the

equivalent of 4 months wages as compensation except for Mary Mbone who was awarded the maximum 12 months wages as compensation.

2. The Respondent was aggrieved with the awards and on 25 November 2014, he filed a Notice of Appeal. On the same day, he filed the present motion seeking

a)...

b)...

c) This Honourable Court be pleased to issue for (sic) an order of stay of execution pending the hearing and determination of the preferred Appeal

d)...

3. Prayers a) and b) have been overtaken by events.

4. The motion was taken on 12 February 2015.

5. The grounds provided by the Respondent on the face of the motion are that a Notice of Appeal has been filed and proceedings applied for; the Respondent is financially stable and that the Claimants being unemployed would not be in a position to refund the decretal sum were the appeal to succeed.

6. The Respondent also relied on an affidavit by Ramesh Thakar sworn on 18 December 2014. The affidavit reiterated the grounds on the face of the motion and added that the Respondent was ready to give security.

7. The Claimants opposed the motion and they relied on a Replying Affidavit sworn on 30 January 2015 by the advocate on record, Steve Biko.

8. Mr. Biko deposed that the motion was incompetent; the Respondent had not demonstrated the appeal had any chances of success; that the financial position of the Claimants was reason for Respondent to pay them; the application was a delaying ploy and made in bad faith.

9. The legal principles for grant of stay pending appeal before this Court and the High Court are now trite. The principles are derivatives from the provisions of Order 42 rule 6. An applicant should demonstrate that it will suffer substantial loss, make the application without unreasonable delay and provide such security for the due performance of the decree as the Court may direct.

10. These legal principles have been discussed and distilled in cases such *Mukuma v Abuoga* (1988) KLR 645, *Jotham Simiyu Wasike & another v Jackson Ongeru & 4 others* (2013) eKLR, *Tabro Transporters Ltd v Absalom Dova Lumba* (2012) eKLR and *Anthony Kiberenge Kamau v Kibuchi Wamunyi & 3 others* (2010) eKLR.

11. The question of an appeal having any chances of success, as urged by Mr. Biko is not one of the principles applicable in this Court or the High Court. I believe that is a principle applicable when a party seeks a stay before the Court of Appeal under the famous rule 5(2)(b) of that Court's Rules.

12. The Respondent brought the application within about a month of the judgment. There was no delay in the circumstances.

13. The Respondent has stated that it is ready to give security.

14. The Respondent further contends that the Claimants may not be in a position to refund the decretal sums were the appeal to succeed. The Respondent appears to suggest the Claimants are persons of straw.

15. This on its own cannot be a sufficient reason to grant stay of execution pending appeal. The Court must look at all the circumstances of a case.

16. Appeals no longer linger in the Courts endlessly. The proceedings in this Cause have been typed though not yet certified.

17. The Respondent has offered to give security.

18. I would grant prayer c) of the motion on the condition that the Respondent deposits the full decretal sums in a joint interest earning account in the names of the Advocates on record for both sides with a commercial bank within the next 10 days.

19. Should the parties not agree on the commercial bank, such account will be opened with any branch of the Kenya Commercial Bank Ltd, Nakuru.

20. Costs of the motion in the cause.

Delivered, dated and signed in Nakuru on this 20th day of February 2015.

Radido Stephen

Judge

Appearances

For Claimants
Advocates

Mr. Biko instructed by Odhiambo & Odhiambo

For Respondent

Mr. Kimatta instructed by Kimatta & Co.

Advocates



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