



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT & LABOUR RELATIONS COURT OF KENYA**

**AT MERU**

**APPEAL NO.5 OF 2020**

*(Before D.K.N.Marete)*

**KENYA DAIRY BOARD.....APPELLANT**

**VERSUS**

**EUNICE NYAGA.....RESPONDENT**

**RULING**

This is an application dated 7th January, 2021 and comes out as follows;

1. *That the application dated 7<sup>th</sup> January 2021 be certified as urgent and admitted for hearing during the court's vacation.*
2. *That this Honourable Court be pleased to grant any order that it deems fit in the circumstances to grant.*

It is grounded thus;

*i) That the applicant/appellant has filed a Notice of Motion dated 7<sup>th</sup> January 2021 seeking for a stay of execution of the judgment and orders dated 27<sup>th</sup> November 2019 issued in Meru Employment and Labour Relations Case No.5 of 2018 pending hearing and determination of the pending appeal.*

*ii) That the Honourable court is now on Christmas recess and the appellant is advised to proceed under the High Court Vacation Rules to fix the Application in the earliest date when the court shall be sitting.*

*iii) That the respondent/Judgment creditor are out to execute the said Judgment and Decree and unless the matter is certified urgent and heard during the vacation the said appeal will be rendered nugatory and subject matter of the application diminished.*

The Respondent in a Replying Affidavit sworn on 19th January, 2021 deems the application not meritorious and prays that the same is disregarded and dismissed.

The reply is on the basis that the application is unmerited and filed late in the day.

The applicant in her written submissions dated 15th February, 2021 states and submits that execution would issue and render her appeal nugatory in the absence of a grant of stay of execution. She prays that the application be sustained.

The Respondent's further case is that a similar application was filed by the applicant and orders were denied by the trial court on 13th February, 2020 and this ruling is the subject matter of this appeal.

Her other submission is that at all times, the applicant was aware of the suit, she was served but ignored to enter appearance. Interlocutory judgment was thereon entered in the matter.

Further, they instructed State Law Office who entered appearance on 28th January, 2019 and these were engaged on various notices and overtures for settlement out of court. These were frustrated by the respondent/Applicant with an intent on delay.

The Respondent in answer further avers that the frustrations in negotiations and settlement of the matter caused her to face the matter for formal proof, a process which was lawful and procedural.

All this time, the Applicant was aware of the court proceedings and only came in with an application for setting aside of the decree and consequential orders. This was coupled with a search for stay of execution with a view to frustrating her realization of the fruits of judgment.

In the penultimate, the respondent's case is that the applicant has failed to annex the order sought to be stayed as required of order 22 rule 6 Civil Procedure Rules, 2010. Again, this application was made and dismissed by this court for being unmeritorious.

She also cites inordinate delay which is unreasonable and has not been explained by the applicant. No reason has been forwarded to explain inadvertent delay to file this application for stay of execution.

A look at the respective cases of the parties tilts this in favour of the Applicant. This is because she is deserving of a hearing at the other level. The circumstances under which interlocutory judgment was entered in this matter make it a one man show. The other party, the Applicant was not heard, or at all.

The right to be heard is fundamental and sacrosanct. It is not deniable. A denial of the same can only be had on extremely glaring grounds. This is not the case here. The delay and inertia involved is excusable in the interest of justice- this is the right to a hearing.

Overall, the circumstances of this case dictates enforcements of a further hearing of the matter. It is our onus to grant this opening to the applicant.

I am therefore inclined to allow the application with orders that each party bears the costs of the application of the same.

**DATED AND DELIVERED AT NYERI THIS 26TH DAY OF JULY, 2021.**

**D.K.Njagi Marete**

**JUDGE**

Appearances

1. Mr.Kieti instructed by State Law Office for the Appellant/Applicant.
2. Mr.Mwiti instructed by Joshua Mwiti Law Advocate for the Respondent.



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