



**IN THE COURT OF APPEAL**

**AT NAIROBI**

**(CORAM: OUKO, (P), OKWENGU & GATEMBU, J.J.A.)**

**CIVIL APPLICATION NO. 89 OF 2018**

**BETWEEN**

**FRANCIS O. OYIER & OTHERS ..... APPLICANTS**

**AND**

**NATIONAL WATER CONSERVATION**

**& PIPELINE CONSERVATION ..... 1<sup>ST</sup> RESPONDENT**

**PRINCIPAL SECRETARY, MINISTRY**

**OF WATER AND IRRIGATION .....2<sup>ND</sup> RESPONDENT**

**THE HONOURABLE ATTORNEY GENERAL ..3<sup>RD</sup> RESPONDENT**

*(An application for stay of execution pending the hearing and determination of an intended appeal from the judgment and decree of the Employment and Labour Relations Court of Kenya at Nairobi (Wasilwa, J.)*

*dated 10<sup>th</sup> November, 2017*

*in*

*ELRC No. 515 of 2016*

*Consolidated with*

*Petition No. 50 of 2016)*

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**RULING OF THE COURT**

Wasilwa, J. by a judgment dated 10<sup>th</sup> November, 2017 dismissed the applicants’ suits in the Employment and Labour Relations Court challenging the 1<sup>st</sup> respondent’s decision to redeploy them back to the parent ministry, the then Ministry of Water and Irrigation, as opposed to absorbing them as its employees. The applicants were originally employed by the aforesaid ministry and subsequently seconded to the 1<sup>st</sup> respondent.

Contesting the judgment, the applicants filed a notice of appeal to that effect as well as the motion before us for stay of execution pending the hearing and determination of the intended appeal.

Pursuant to the Court’s Covid-19 Practice Note, notice was given to the parties and counsel, that the motion would be disposed of by written submissions without the appearance of counsel. Nonetheless, the respondents did not file any replying affidavits and likewise, none of the parties filed their written submissions. This determination of the application is therefore based on the pleadings on record.

First we note that the decision of the court below sought to be stayed was a dismissal of the applicant's suit, amounting to a negative order which did not require any of the parties to do or to refrain from doing anything. It follows therefore that the decree is incapable of being enforced or executed, hence cannot be stayed. See **Charles Munyendo Olingo vs. Salim Chetechi Makokha & Another** [2019] eKLR.

Furthermore, we cannot help but note that despite the notice of appeal being filed on 13<sup>th</sup> November, 2017 the applicants are yet to file the substantive appeal in this Court more than three years later. In our view, the only logical conclusion of this inactivity on the part of the applicants is that they are no longer intent on pursuing the appeal. Even though that is the position and we would have, on our own motion invoked **Rule 83** of this Court's Rules and deemed the applicant's motion as withdrawn, on merit we dismiss it with no orders as to costs.

**DATED AND DELIVERED AT NAIROBI THIS 19TH DAY OF MAY, 2021.**

**W. OUKO, (P)**

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**JUDGE OF APPEAL**

**HANNAH OKWENGU**

.....

**JUDGE OF APPEAL**

**S. GATEMBU KAIRU, (FCIArb)**

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**JUDGE OF APPEAL**

*I certify that this is a true copy of the original.*

*Signed*

**DEPUTY REGISTRAR**