



IN THE COURT OF APPEAL

AT KISUMU

(CORAM: ASIKE MAKHANDIA, KIAGE & ODEK J.J.A.)

CIVIL APPLICATION NO. 86 OF 2018

BETWEEN

THE CLERK COUNTY COUNCIL OF LUGARI.....APPLICANT

AND

JOSEPHAT MULONGO WEKESA.....RESPONDENT

(Application for stay of execution pending appeal from the judgment and decree of the Employment and Labour Relations Court of Kenya at Bungoma (**Nduma J.**) dated 1st December, 2017 in **ELRC NO. 1 OF 2017 (Formerly Kisumu Cause No. 3 OF 2017)**)

RULING OF THE COURT

Whereas **Mr. Ashitiva**, learned counsel for the applicant is in court and ready to proceed with this matter, there is no appearance for or by the respondent though served.

Having considered the application and the replying affidavit sworn by the respondent on 30th November, 2018, we are of the view that the orders sought are merited.

As all that an applicant needs show is that he has an arguable point to canvas on appeal, which is not the same as one that must necessarily succeed, we are satisfied on that ground.

We think also that the intended appeal, if successful, may be rendered nugatory unless we exercise our discretion in favour of granting the stay orders sought. We grant them.

As the judgment sought to be appealed against was delivered on 1st December, 2017, we are not impressed that the applicant is yet to file the record of appeal. To urge it to a more proactive stance, we direct that it file the record of appeal within forty five **(45) days** of today failing which these stay orders shall lapse. Costs shall be in the intended appeal.

MADE at Kisumu this 21st day of May, 2019.

ASIKE MAKHANDIA

.....

JUDGE OF APPEAL

P. O. KIAGE

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JUDGE OF APPEAL

OTIENO-ODEK

.....

JUDGE OF APPEAL

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

DEPUTY REGISTRAR.