



**REPUBLIC OF KENYA**  
**COURT OF APPEAL AT NAIROBI**  
**CIVIL APPLICATION 259 OF 2012**

**KENYA UNION OF POST PRIMARY**

**EDUCATION TEACHERS.....1<sup>ST</sup> APPLICANT**

**AKELO MISORI – Secretary General**

**of the 1<sup>st</sup> Respondent.....2<sup>ND</sup> APPLICANT**

**OMBOKO MILEMBA.....3<sup>RD</sup> APPLICANT**

**WICK MWETHI NJENGA.....4<sup>TH</sup> APPLICANT**

**AND**

**NJERU KANYAMBA, (Immediate Former  
Secretary General of the 1<sup>st</sup> Respondent .....RESPONDENT**

*(An application for stay pending appeal against the judgment of the High Court of Kenya at Nairobi (Nzioka wa Makau, J.) made on the 11<sup>th</sup> day of October, 2012 and decree issued on 16<sup>th</sup> October, 2012 dated 10<sup>th</sup> October, 2012*

**in**

***INDUSTRIAL CAUSE NO. 1918 OF 2011)***

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**RULING**

This application was placed before me on 16<sup>th</sup> October, 2012 for directions on the issue of urgency pursuant to **Rule 47** of the **Court of Appeal Rules**.

After going through the same, I was not persuaded that the same was urgent

and so I declined to certify it as such. The main reason for not certifying it as urgent is that, due to the current dire shortage of Judges in this Court – currently standing at only seven available Judges who have

to cover the entire country, it has been impossible to hear all applications that have been certified as urgent or to even allocate them hearing dates in the near future. What this has translated into is that, unless an application is extremely urgent for instance, in instances touching on deprivation of a person's liberty or imminent danger of suffering irrecoverable loss, then the court will shy away from certifying a matter as urgent. It is against this backdrop that I declined to certify this matter as urgent.

I also studied the ruling of the learned Judge which the applicant herein intends to appeal against and appreciated the reasons as to why the applicant was denied a hearing before the trial court.

I must nonetheless refrain from commenting on the merits or otherwise of the application that is pending before this Court because that is not the matter before me.

Having heard both parties on the issue of urgency, I have learnt that the applicant has already exhausted the stay order which had been granted by the trial court. This was a fact that he failed to disclose in the affidavit in support of the certificate of urgency. I also note that according to the respondent, to him this is a matter of life and death and he may therefore want to have the application disposed of expeditiously.

In the circumstances, I am inclined to allow this certificate for whatever it is worth. Counsel for the applicant is nonetheless advised that I have no jurisdiction at this stage and as a single Judge to grant any orders of stay of execution. That is a preserve of the three Judge bench that will hear the notice of motion under **Rule 5(2) b** of the **Court of Appeal Rules**. My mandate as a single Judge ends with certifying this matter as urgent.

Accordingly, I vacate my earlier order declining to certify the notice of motion herein as urgent and certify it as such with no orders as to costs.

*Dated and Delivered at Nairobi this 9<sup>th</sup> day of November, 2012.*

**W. KARANJA**

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**JUDGE OF APPEAL**

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

**DEPUTY REGISTRAR**