



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**

**CAUSE NO. 746 OF 2014**

**JOHN MUTIA MALUKI.....CLAIMANT**

**VERSUIS**

**SCHENKER LIMITED.....RESPONDENT**

**RULING NO. 2**

1. On 15 January 2018, the Court delivered judgment in which judgment was entered for the Claimant for Kshs 132,000/- being pay in lieu of notice and Kshs 792,000/- being compensation. The Claimant was also awarded costs and interest.
2. The Respondent was dissatisfied and it filed a *Notice of Appeal* on 25 January 2018.
3. On 5 February 2018, the Respondent moved the Court seeking stay of execution of judgment.
4. When the application came up for hearing on 20 February 2018, the parties at the prompting of the Court reached a consent to the effect that Kshs 500,000/- be paid to the Claimant and the balance of Kshs 420,000/- be deposited into a joint interest earning account in the names of the advocates with Standard Chartered Bank Kenya Ltd.
5. The consent was adopted by the Court on 21 February 2018.
6. The party and party costs were taxed on 8 November 2018 and this must have alarmed the Respondent on the probability of execution, and therefore on 21 November 2018, it filed an application seeking orders
  1. ...
  2. **THAT** this Honourable Court be pleased to issue an order directing the Claimant/Respondent to comply with the terms of the consent of 20<sup>th</sup> February 2018 adopted as an order of this Honourable Court its order issued on the 21<sup>st</sup> of February 2018.
  3. **THAT** this Honourable Court do issue an order of status quo in terms of the stay orders issued on 20<sup>th</sup> February 2018 pending the hearing of this application inter partes.
  4. **THAT** in the alternative, this Honourable Court be pleased to issue an order directing the Respondent/Applicant to deposit the entire decretal award in Court as security for stay pending appeal.
7. The Claimant filed a replying affidavit in opposition to the application on 4 December 2018, and the Court took arguments on the same day.
8. The anchor ground advanced in support the Respondent's application was that it had deducted statutory deductions from the sum of Kshs 500,000/- (deduction was stated to be Kshs 142,677/- and cheque for Kshs 357,323/- was issued to the Claimant). Section 49(2) of the Employment Act, 2007 was cited.
9. The Claimant, in opposing the application contended that the application was frivolous, vexatious and an abuse of the court process.
10. In the view of the Court, the instant application should not have reached the Court were the advocates on record minded to be candid with their instructing clients.
11. It is ill advised for parties to bring disputes which they could agree on thus saving precious judicial time and avoiding escalation of legal costs.

12. It appears to the Court that the application was merely meant to frustrate the Claimant from enjoying the fruits of the judgment delivered on 15 January 2018, for why did the Respondent wait for taxation of the bill of costs before moving the Court (about 7 months after the consent).

13. Considering that the amount the parties agreed to deposit into an interest earning account would be more than adequate to cater for statutory deductions as contemplated by section 49 of the Employment Act, 2007, the Court declines to grant any of the orders sought in the application filed in Court on 21 November 2018.

14. The Respondent is ordered to pay to the Claimant the sum of Kshs 500,000/- as agreed in the consent, within 7 days from today.

15. Costs to the Claimant.

**Delivered, dated and signed in Nairobi on this 1<sup>st</sup> day of February 2019.**

**Radido Stephen**

**Judge**

**Appearances**

For Claimant Mr. Mutemi instructed by Nzamba Kitonga & Co. Advocates

For Respondent Mr. Njiru instructed by Mumia & Njiru Advocates

Court Assistant Lindsey