



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR**  
**RELATIONS COURT AT MOMBASA**  
**CAUSE NUMBER 323 OF 2015**

**BETWEEN**

**ISSA SHEKUE SHALL.....CLAIMANT**

**VERSUS**

**BUSCAR LIMITED.....RESPONDENT**

**RULING**

1. Judgment was delivered in favour of the Claimant, on 22<sup>nd</sup> November 2018.
2. The Respondent filed a Notice of Appeal, 19 days later on 11<sup>th</sup> December 2018.
3. On 17<sup>th</sup> December 2018, the Respondent filed an Application seeking leave to change its Advocates, and asking for an order of stay of execution pending Appeal.
4. The Application is supported by an Affidavit sworn by Respondent's Director, Salim Sheikham Salim, on 17<sup>th</sup> December 2018.
5. The Claimant filed his Replying Affidavit sworn on 1<sup>st</sup> February 2019.
6. Parties subsequently filed Submissions which were highlighted, on 7<sup>th</sup> March 2019.
7. Leave was granted to the Law Firm of Ngonze & Ngonze, to replace the Law Firm of Katuga & Company, for the Respondent, on 7<sup>th</sup> March 2019.

**The Court Finds:-**

8. The Respondent has not established that it has an arguable Appeal.
9. There is no draft Memorandum of Appeal attached to the Affidavit of Salim Sheikham Salim, to enable this Court gauge if the intended Appeal is arguable.
10. The Notice of Appeal filed, does not enable the Court to assess if the intended Appeal is arguable.
11. Whereas it is not in the jurisdiction of the Trial Court to rule on the formal validity of the Notice of Appeal, there is merit in the Claimant's position that: the said Notice was filed outside the time allowed by the Court of Appeal Rules; and was served upon the Claimant out of time.
12. It is difficult in the circumstances, to agree with the Respondent, that there is a valid Notice of Appeal filed and therefore there is an Intended Appeal, capable of prompting the Court to go into considering grant of an order of stay of execution.
13. The questions surrounding formal validity of the Notice of Appeal, and the non-disclosure of the grounds of the Intended Appeal, persuade the Court that the Respondent has not established there is an Intended Appeal; and two an arguable Appeal.

14. Lastly there is no specific security offered by the Respondent to the Claimant. It is not sufficient for Respondent's Advocate to submit that the Respondent shall abide by any terms, imposed by the Court in granting stay of execution. The Respondent, having received Notice of Entry of Judgment, complete with details of costs awarded to the Claimant, ought to have proposed specific security.

**IT IS ORDERED:-**

- a) The Application filed by the Respondent on 17<sup>th</sup> December 2018, seeking an order for stay of execution is rejected.*
- b) Costs to the Claimant.*

**Dated and delivered at Mombasa this 28<sup>th</sup> day of March 2019.**

**James Rika**

**Judge**