



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA**

**AT NAIROBI**

**CAUSE NO. 1137 OF 2014**

**MARY ACHIENG OUMA.....1<sup>ST</sup> CLAIMANT**

**JECINTA ADHIAMBO OUMA.....2<sup>ND</sup> CLAIMANT**

**- VERSUS -**

**SALIHUYA COMPANY LIMITED.....RESPONDENT**

(Before Hon. Justice Byram Ongaya on Friday 12<sup>th</sup> July, 2019)

**RULING**

The application is filed for the claimants on 28.09.2018 through Ojienda & Company Advocates and brought under rule sections 1A, 1B, 3 and 3A of the Civil Procedure Act Cap.21 Laws of Kenya and Order 42 and Order 51 of the Civil procedure Rules, 2010. The prayers are for the Court to discharge its orders of stay and allow the respondents to proceed with execution; upon grant of the foregoing order the Court do release the security in part satisfaction of the decree; and costs be in the cause.

The grounds urged in support of the prayers are that judgment was delivered on 23.09.2016 in favour of the claimant for payment of Kshs. 144, 000.00 together with interest and costs. By ruling delivered on 03.11.2017 orders were granted for stay of execution pending appeal on condition the awarded sums are deposited in Court. The deposit was done on 04.12.2017. The notice of appeal was filed on 27.09.2016 and the respondent has not taken any steps to file the record of appeal and to prosecute the same.

The respondent has opposed the application by filing on 17.10.2018 the replying affidavit of Kefa Ombati Advocate for the respondent. The respondent says that it has applied and paid for satisfied copies of proceedings but the same have not been made available to file the record of appeal.

The Court has perused the Court file and the typed proceedings are on record but not certified. It would amount to manifest injustice for the applicant to be kept out of the enjoyment of the fruits of the successful litigation on account of an appeal process which the respondent is not keen to prosecute. Such manifest injustice is a good ground for review of the stay orders.

In the circumstances the application filed on 28.09.2018 is hereby determined with orders:

- a) The respondent to file the record of appeal of the intended appeal by 01.09.2019 failing, prayers (1) and (2) of the application to stand granted.
- b) The respondent to pay costs of the application.

**Signed, dated and delivered in court at Nairobi this Friday 12<sup>th</sup> July, 2019.**

**BYRAM ONGAYA**

**JUDGE**