



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

MISCELLANEOUS APPLICATION NO.16 OF 2012

(Before Hon. Justice Mathews N. Nduma)

REPUBLICAPPLICANT

VERSUS

THE INDUSTRIAL COURT (AS ESTABLISHED UNDER THE LABOUR

INSTITUTIONS ACT NO. 12 OF 2007) 1ST RESPONDENT

ATTORNEY GENERAL..... 2ND RESPONDENT

AND

JAMES MACHUKA.....APPLICANT/INTERESTED PARTY

EX-PARTE

INDUSTRIAL & COMMERCIAL DEVELOPMENT

CORPORATION.....RESPONDENT/EX-PARTE APPLICANT

RULING

1. The court made the following order on 24th February, 2015.

“That stay be and is hereby allowed pending appeal on condition that the applicant deposit in court Kshs.3,045,165 within 30 days in default execution to issue”

2. The order was complied with by the Respondent.

3. The Applicant/Interested party, seeks the court to review its order and release the deposited funds on the ground, that the appeal was not filed within the stipulated time.

4. Once a Notice of Appeal has been filed, which is the case in the present matter, the trial court has no jurisdiction to revisit the matter again. It is functus officio. The Notice of Appeal was filed six days after judgment was delivered on 11/12/2014.

5. In the case of **Jane Anyona Omutsani v Nasibi Aore (2015) eKLR**, Justice E. Obaga held;

*“I have considered the applicant’s application and the issue for determination is **whether a court which has granted stay of execution pending appeal to a higher court can be asked to review its decision.** When the respondent came to court seeking stay of execution, he demonstrated to court that he had filed a notice of appeal and he met the conditions for grant of stay pending appeal. **Under rule 6(4) of the Civil Procedure Rules it is provided that for purposes of this rule an appeal to the Court of Appeal shall be deemed to have been filed when under the rules of that court, notice of appeal has been given. In the present case, the respondent had filed a notice of appeal which was issued under the rules of Court of Appeal. It therefore follows that he had filed an appeal to the Court of Appeal. If the Respondent has failed to serve the appeal documents as required or if he has failed to have his appeal fixed for hearing, the applicant cannot come to this court seeking to have the stay orders reviewed or set aside. The applicant has an avenue of moving the Court of Appeal to have the notice struck out or the appeal itself dismissed for want of prosecution.** She cannot move this court to set aside the stay orders.”*

6. For the above reasons the application for review lacks merit and is dismissed with costs.

Dated and Signed in Kisumu this 1st day of February, 2018

Mathews N. Nduma

Judge

Delivered and signed in Nairobi this 16th day of February, 2018

Maureen Onyango

Judge

Appearances

Nyabena for Applicant/Interested Party

Mr. Obura for Respondent/Exparte Applicant

Anne Njung’e – Court Clerk