



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

**CAUSE NUMBER 1044 OF 2012**

NGUMBAU MULINGWA.....1<sup>ST</sup> CLAIMANT  
PETER KITHEKA NGULUNGU.....2<sup>ND</sup> CLAIMANT  
SAMUEL MUSYOKI MWENZE.....3<sup>RD</sup> CLAIMANT  
MUSYOKI KINOO.....4<sup>TH</sup> CLAIMANT  
PIUS MUMO WAMBUA.....5<sup>TH</sup> CLAIMANT  
PETER KIOKO MBALAU.....6<sup>TH</sup> CLAIMANT  
GEORGE MUTINDA MUTHEMBWA.....7<sup>TH</sup> CLAIMANT  
JAMES MULE MAWEU.....8<sup>TH</sup> CLAIMANT  
NZUKI NZAU.....9<sup>TH</sup> CLAIMANT  
ALEX WAEMA MALOMBE.....10<sup>TH</sup> CLAIMANT  
RICHARD MUSEMBI NZUVE.....11<sup>TH</sup> CLAIMANT  
MUTUKU KYALO.....12<sup>TH</sup> CLAIMANT  
RATEMO MATAGE DANIEL.....13<sup>TH</sup> CLAIMANT

VERSUS

ATHI RIVER STEEL PLANT LIMITED.....RESPONDENT

**RULING**

1. By motion dated 5<sup>th</sup> December 2016 the respondent sought stay of execution of the court's judgment delivered on 2<sup>nd</sup> septmeber 2012 in favour of the claimant pending appeal.
2. The application is purportedly brought under **Rule 4, 5(2) (b), 42 and 74** of the **Court of Appeal Rules**. This is not an appellate court. The Court of Appeal Rules therefore do not apply in this court. The applicable rules are **Order 42** of the **Civil Procedure Rules** read together with **Rule 32 (2)** of the Court Rules.
3. Under **Order 42, Rule 6 (2)**, no order of stay of execution shall be made under sub-rule 1 unless the order is made and that the application is made without unreasonable delay and such security as the court orders for the due performance of such decree or order as may ultimately be binding on his has been given by the applicant. As can be observed herein the considerations for grant of stay before the trial court do not include arguability or otherwise of the appeal.

4. The court awarded each of the twelve claimants on month's salary in lieu of notice and six months' salary as compensation for unfair termination of service. The total decretal sum once computed is substantial and once paid out to the claimants may be difficult to recover if the respondent is successful on appeal.

5. The rules however require that the respondent furnishes such security for the due performance of the decree. The court will therefore order that the respondent do deposit in court the sum of Kshs.1,227,450/= being the decretal sum herein within 45 days of this ruling, in default execution to proceed.

6. It is so ordered.

**Dated at Nairobi this 2<sup>nd</sup> day of March 2018**

**Abuodha J. N.**

**Judge**

**Delivered at Nairobi this 2<sup>nd</sup> day of March 2018**

**In the presence of:-**

..... for the claimant

..... for the Respondent

**Abuodha J. N.**

**Judge**