



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

**AT NAIROBI**

**CAUSE 1672 OF 2013**

**BEATRICE OSEBE & 5 OTHERS.....CLAIMANTS**

**VERSUS**

**MILLS INDUSTRIES LIMITED.....RESPONDENT**

**RULING**

1. By a motion dated 30<sup>th</sup> August, 2017 the respondent sought leave of the court to appeal out of time against the judgement of the court passed on 12<sup>th</sup> February, 2016. The application was based on the grounds that the present firm of advocates took over the matter on or about April, 2017 and at that time no notice of appeal was filed as a result of oversight.
2. The applicant further stated that there was imminent threat of execution as the claimant had taken out warrants of attachment and sale and further instructed Ms Mbusara Auctioneers to proclaim the respondents goods. The applicant contended that the application raised traible issues and it was therefore in the interest of justice that the orders be granted.
3. This matter was heard on merit and the court rendered its judgement on 19<sup>th</sup> February, 2016. The decree holder drew and filed his bill of costs and the same was taxed and ruling delivered on 29<sup>th</sup> June, 2017.
4. On 28<sup>th</sup> March, 2017 the Deputy Registrar was informed that there was a new counsel on record and ordered that the counsel be served. The parties thereafter appeared before the Deputy Registrar on 19.4.2017, 4.5.2017 and 5.5.2017. From the record, there is no indication that the new counsel on record for the respondent had any problem with the judgement and sought to appeal.
5. The warrants of attachment were issued on 28<sup>th</sup> August, 2017 and two days thereafter the respondent brought this application. From the sequence of events and considering that the judgement herein was delivered on 19<sup>th</sup> February, 2016 and the application herein filed on 30<sup>th</sup> August, 2017. Over one year later and immediately after the warrants of attachment were issued the court can only conclude that the application is not only inordinately late but a device to delay or defeat the decree holder's right to the fruits of the court judgement.
6. The respondent contends it has an arguable appeal but has not in the supporting affidavit or by way of draft memorandum of appeal attempted to demonstrate what aspects of the judgement it is faulting and the points it intends to canvass on appeal.
7. The application is therefore found frivolous and is hereby dismissed with costs.
8. It is so ordered.

**Dated at Nairobi this 9<sup>th</sup> day of August, 2018**

**Abuodha J. N.**

**Judge**

**Delivered at Nairobi this 9<sup>th</sup> day of August, 2018**

**Abuodha J. N.**

**Judge**

**In the presence of:-**

.....for the Claimant

.....for the Respondent.