



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU**  
**CAUSE NO. 185 OF 2015**

**JOSEPHINE KIRIGO KAGWANJA      CLAIMANT**

**V**

**WARUHIU CONSTRUCTION LTD      RESPONDENT**

**RULING**

1. Judgment was delivered in this Cause on 14 October 2016 wherein the Court found and held that the Claimant was constructively dismissed and ordered the Respondent to pay her Kshs 35,280/-.
2. The Respondent was aggrieved with the judgment and it moved Court on 26 October 2016 seeking stay of execution pending appeal.
3. The Court granted conditional stay at the *ex parte* hearing of the application and scheduled the *inter partes* hearing for 9 November 2016.
4. In the meantime, the Respondent deposited the decretal sum in compliance with the conditional stay.
5. When the motion was called out for hearing on 9 November 2016, both the Claimant and Respondent were not present in Court and the Court dismissed the motion seeking stay of execution pending appeal and at the same time directed that the monies deposited into Court be released to the Claimant. The monies, according to the record have been released.
6. On 18 November 2016, the Respondent moved Court again, seeking the setting aside of the orders dismissing the application for stay of execution pending appeal and reinstatement of the motion.
7. The Court directed that this latter application be served for *inter partes* hearing on 25 January 2017.
8. When this motion came up for arguments, the Claimant's counsel informed the Court that she was not opposing the motion.
9. However, despite the position taken by the Claimant, the orders being sought by the Respondent have been overtaken by events and would serve no purposes because the decretal sum having been released to the Claimant and there being no application for redeposit of the same, reinstating the dismissed motion would be a mere academic exercise.
10. The Court also notes that despite the judgment having been delivered more than 3 months ago, no Notice of Appeal is on record and, equally no application to extend time for filing one has been filed.
11. The Court therefore declines the invitation by the Respondent in spite of the non-opposition by the

Claimant and orders that the motion dated 16 November 2016 be dismissed with no order as to costs.

**Delivered, dated and signed in Nakuru on this 24<sup>th</sup> day of March 2017.**

**Radido Stephen**

**Judge**

**Appearances**

For Claimant      Ms. Ogega instructed by Munene Chege & Co. Advocates

For Respondent    Mr. Maina instructed by Ikua, Mwangi & Co. Advocates

Court Assistants   Nixon/Daisy