



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR**  
**RELATIONS COURT AT MOMBASA**  
**CAUSE NUMBER 742 OF 2015**  
**BETWEEN**  
**KENYA ENGINEERING WORKERS UNION .....CLAIMANT**  
**VERSUS**  
**KENYA MARINE CONTRACTORS EPZ .....RESPONDENT**  
**RULING**

1. The Court delivered a Judgment in this dispute, on 2<sup>nd</sup> December 2016, giving the following Orders:-
  - a) *It is declared redundancy was based on valid reasons, but flawed on procedure.*
  - b) *The Respondent is at liberty to go on with the process, while avoiding such missteps as pointed out above, and shall pay to the Claimant's Members all their redundancy benefits under Section 40 of the Employment Act and the prevailing CBA.*
  - c) *No order on the costs.*
2. On 12<sup>th</sup> January 2017, barely a month after the Judgment, the Claimant was back in Court, with an Application seeking the following main orders:-
  - a) *The Respondent's Director Simon Philips is arrested and jailed for contempt of Court.*
  - b) *The Judgment delivered on 2<sup>nd</sup> December 2016 is stayed, pending signing and registration of the CBA, as per Judgment in Cause No. 152 of 2012 and Appeal No. 28 of 2015.*
3. The Application was heard on 22<sup>nd</sup> February 2017.

***Court Finds:-***

4. The Application is fundamentally flawed from the very outset.
5. The Claimant seeks to enforce Judgment, through contempt proceedings, while in the same breath, asks the Court to stay Judgment pending signing and registration of the CBA. Allusion is made to other Court Actions, which were not brought to the attention of this Court during trial.

6. It is not possible to have orders of enforcement and stay of a Judgment, simultaneously, under the same proceedings.

7. The Claimant misled the Court during trial on the presence of a CBA concluded between the Parties. In the Pleadings leading to the Judgment of 2<sup>nd</sup> December 2016, the Claimant repeatedly referred to violation of the Employment Act and Clause 24 of the CBA. The Claimant now seeks stay of Judgment pending signing and registration of the CBA.

8. It was not intended that the Judgment of 2<sup>nd</sup> December 2016, results in the Court being drawn in, to supervise future redundancy processes at the Respondent.

9. It is imperative for Parties to await the outcome of pending Court Actions. The Claimant should not keep coming to Court piecemeal, with half-baked grievances, contradictory prayers, and alternative facts.

10. The Application filed on 12<sup>th</sup> January 2017 lacks coherence, and is rejected. No order on the costs.  
***It is so ordered.***

Dated and delivered at Mombasa this 24<sup>th</sup> day of March 2017.

**James Rika**

**Judge**