



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU**  
**CAUSE NO. 306 OF 2015**

**BENARD OUMA OCHANJO**

**CLAIMANT**

**V**

**COMPLY INDUSTRIES LIMITED**

**RESPONDENT**

**RULING**

1. There are 2 applications by the Respondent for determination. Both applications were taken together.
2. The first application was filed on 9 March 2017, seeking
  1. THAT this honourable court be and is hereby pleased to review the judgment dated 27/1/2017.
  2. THAT the said judgment is reviewed by taking into account the Kshs 35,703/= which had already been paid to the claimant through the Labour office.
3. The second application was filed on 21 March 2017 and it sought
  1. ..
  2. THAT there be a temporary stay of execution pending the hearing and determination of the review application herein.
  3. THAT the costs of this application be in the cause.
4. On 21 March 2017, the Court granted a stay of execution in terms of prayer 2 in the latter application on condition that the disputed amount of Kshs 35,703/- would be deposited into Court. The amount was duly deposited in Court.
5. Although the application of 21 March 2017 raised legal issues as to how the Claimant carried out the execution of the decree, it is technically spent/incompetent, because of the transient manner in which the order was framed, and the Court will not examine it.
6. The Claimant's advocate filed a replying affidavit on 13 March 2017 in opposition to the first application and arguments were taken on 21 April 2017.
7. The Claimant admitted in his replying affidavit that he had been paid Kshs 35,703/-, though according to him it was not adequate. Same admission was made in the Memorandum of Claim.
8. The payment was part of the dues made to the Claimant, and because he also made claims for the dues

in Court, it would be unconscionable for the Claimant to receive double payment.

9. The Court would therefore allow the application for review by ordering that the judgment award of Kshs 128,000/- be reduced by Kshs 35,703/-.

10. The amount deposited in Court should be released to the Respondent's advocate on record.

11. Each party to bear own costs of the application.

**Delivered, dated and signed in Nakuru on this 31<sup>st</sup> day of July 2017.**

**Radido Stephen**

**Judge**

**Appearances**

For Claimant      Mr. Opar instructed by Wanyama & Co. Advocates

For Respondent    Mr. Masese instructed by Mumia & Njiru Advocates

Court Assistant    Nixon