



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

**CAUSE NO. 239 OF 2013**

**LAWRENCE TIROP YATOR**

**CLAIMANT**

**v**

**POSTAL CORPORATION OF KENYA**

**RESPONDENT**

**consolidated with**

**CAUSE NO. 240 OF 2013**

**MONICA CHEPKEMOI NJOROGE**

**CLAIMANT**

**v**

**POSTAL CORPORATION OF KENYA**

**RESPONDENT**

**RULING**

1. In a judgment delivered on 2 September 2016, the Court found that the dismissals of the Claimants were not fair and awarded them pending wages and compensation, together with costs.
2. On 14 October 2016, the Respondent filed an application seeking review of the judgment/award.
3. This is the application for determination in this ruling, but some background as can be gleaned from the record is necessary to ensure the multiple applications on file do not obfuscate a fair and proportionate determination of the post judgment applications.
4. The Claimants presented their bill of costs before the Taxing Officer and after taxation on 28 March 2017, certificates of cost(s) were issued on 5 April 2017, culminating in the Claimants commencing execution process.
5. The Claimants had in the meantime instructed auctioneers who moved with dispatch on 4 April 2017 to proclaim several of the Respondents assets.
6. The Respondent was dissatisfied with the taxation and on 30 March 2017, it requested the Taxing Officer to give reasons for the taxation decision.
7. On 8 May 2017, the Respondent moved Court, in *Nakuru Cause No. 239 of 2013* seeking

1. ...

2. **THAT** there be a stay of execution of the judgment, decree and certificate of taxation herein pending inter partes hearing of the application.

3. **THAT** there be a stay of execution of the judgment, decree and certificate of taxation herein pending the hearing and determination of the application for review dated 10<sup>th</sup> October 2016.

4. **THAT** there be a stay of execution of the judgment, decree and certificate of taxation herein pending the filing and determination of the intended reference against taxation.

5. **THAT** the court be pleased to lift the attachment herein.

6. **THAT** cost of this application be provided for.

8. In *Nakuru Cause No. 240 of 2013*, the Respondent sought the following orders

1. ...

2. **THAT** there be a stay of execution of the judgment, decree and certificate of taxation herein pending inter partes hearing of the application.

3. **THAT** there be a stay of execution of the judgment, decree and certificate of taxation herein pending the filing and determination of the intended reference against taxation.

4. **THAT** the court be pleased to lift the attachment herein.

5. **THAT** cost of this application be provided for.

9. On 9 May 2017, the Court sitting in Nairobi granted 2 different orders.

10. In *Nakuru Cause No. 239 of 2013*, the Court ordered

THAT stay of execution is hereby granted pending hearing of the Application for Review on 20.6.2017 before Justice Radido.

11. On the other hand in *Nakuru Cause No. 240 of 2013*, the Court granted an order

THAT stay of execution is hereby granted pending hearing and determination of an intended reference to be filed within 30 days.

12. Why the Respondent opted to file 2 distinct applications when the Causes had been consolidated is baffling. The reasons can only be known to itself but without doubt, it is a course of action which could easily cause confusion and embarrassment to the Court as the reality of rendering inconsistent orders is a possibility.

13. Be that as it may be, the import of the order issued in *Nakuru Cause No. 240 of 2013* is that the stay of execution order lapsed on or around 9 June 2017, for the Respondent has not filed a Reference as directed. The stay was conditional.

14. As regards the stay granted in *Nakuru Cause No. 239 of 2013*, the same will abide the outcome of the instant ruling.

### **The review application**

15. In seeking the review, the Respondent urged that the Court based its computation of the compensation awarded to the Claimant in *Nakuru Cause No. 239 of 2013* on a gross monthly salary of Kshs 40,475/- which included commuter and leave travelling allowances, and not the Kshs 28,175/- gross monthly

salary as pleaded.

16. According to the Respondent, that was an error apparent on the face of the record.

17. Section 49(1)(c) of the Employment Act, 2007 provides that compensation should be assessed on the basis of *gross monthly wage or salary at the time of dismissal*.

18. The Claimant in *Nakuru Cause No. 239 of 2013* was dismissed on 19 June 2013. Among the documents he produced as exhibits was a copy of pay slip for May 2013 which indicated that the gross monthly salary was Kshs 40,475/-.

19. The pay slip was the evidence of remuneration at the time of separation despite the pleaded amount. The pay slip was proved in Court. It was a document emanating from the Respondent and it was aware of it well before the hearing.

20. The Court would therefore reject the contention by the Respondent that there was an error on the face of the record warranting review of the judgment.

### **Conclusion and Orders**

21. The upshot of the foregoing is that the Court finds no merit in the 3 applications on record and orders that they be dismissed with costs to the Claimants.

22. The Court further finds and holds that the *conditional stay of execution* granted in respect of *Nakuru Cause No. 240 of 2013* lapsed without the Respondent complying with the condition set.

23. The Claimants are therefore at liberty to continue with the process of execution.

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

**Radido Stephen**

**Judge**

### **Appearances**

For Claimants            Mr. Rugut instructed by Chepkwony & Co. Advocates

For Respondent        Ms. Kipruto instructed by Kwengu & Co. Advocates

Court Assistants        Nixon/Martin