



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

**CAUSE NO. 169 OF 2013**

**(Originally Nairobi Cause No. 1423 of 2011)**

**KENYA UNION OF DOMESTIC, HOTELS,**

**EDUCATIONAL INSTITUTIONS,**

**HOSPITALS & ALLIED WORKERS**

**CLAIMANT**

**v**

**SILVER HOTEL, NAIVASHA**

**RESPONDENT**

**RULING**

1. The Court delivered a judgment on 3 May 2016.
2. On 14 July 2017, the Respondent moved Court under certificate of urgency seeking stay of execution and the setting aside of the judgment.
3. The Court, on the same day allowed stay of execution on condition that the sum of Kshs 816,674/50 being the decretal sum be paid into Court on or before 19 July 2017 pending the inter partes hearing of the motion on 20 July 2017.
4. When the motion was placed before Court today, the Claimant, despite service was not in Court and the Court allowed the Respondent to proceed with the application.
5. The Court has noted that the condition upon which stay was granted was not complied with.
6. The Respondent has attempted to explain the non-compliance through a Supplementary Affidavit filed in Court this morning by stating she is not in a financial position to raise the decretal sum.
7. The Respondent in the main application posits that her then advocate on record did not appear in Court for hearing on 18 January 2016 and when she sought explanations, the advocate denied having received instructions to defend her.
8. The said firm of advocates filed a Response in Court on 20 September 2011, and without further details, the Court is unable to accept the contention that the advocate had no instructions.
9. If indeed the Respondent instructed the advocate on record at the time of hearing to defend her, and he failed, the Respondent has options to consider.

10. The orders sought by the Respondent are discretionary.

11. There was an advocate on record during the hearing. The Respondent has also failed to sufficiently explain the failure to comply with the condition upon which the stay of execution was granted.

12. In the circumstances the Court decline to exercise its discretion in favour of the Respondent and orders that the motion dated 13 July 2017 be dismissed with costs.

**Delivered, dated and signed in Nakuru on this 20<sup>th</sup> day of July 2017.**

**Radido Stephen**

**Judge**

**Appearances**

For Claimants            KUDHEIHA (absent)

For Respondent        Mr. Wairegi instructed by Wairegi Kiarie & Associates

Court Assistants        Nixon/Martin