



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**  
**AT NAIROBI**  
**CAUSE NO. 2099 OF 2014**

**JOTHAM KANJA MWAI .....1<sup>ST</sup> CLAIMANT**  
**JOSEPH KISANYA INDIAZI ..... 2<sup>ND</sup> CLAIMANT**

*VERSUS*

**MUSIARA LTD. (GOVERNORS CAMP).....RESPONDENT**

M/S Guserwa for respondent/applicant

Claimants in person

**RULING**

1. By a notice of motion application filed on 19<sup>th</sup> May 2017, the respondent/applicant seeks an order for stay of the execution of the judgment of the court delivered on 28<sup>th</sup> April 2017.
2. The application is supported on the grounds set out in the notice of motion to wit;
3. That the respondent/applicant intend to appeal the decision of the court in that the trial Judge erred in holding that the claimants were entitled to payment of benefits accruing to unionsable employees when they were not unionsable.
4. That the respondent/applicant will suffer irreparable loss if a stay of execution is not granted and is ready and willing to provide reasonable security for the judgment.
5. The application is opposed vide a replying affidavit of the 1<sup>st</sup> claimant stating that the application has no merit and it be dismissed with costs. That the applicant only seeks to delay justice. That the claimants worked faithfully for the respondent for twenty (20) and twelve (12) years respectively until retirement on 30<sup>th</sup> September 2014 and are lawfully entitled to their retirement benefits awarded by the court.

**Determination**

6. The award of the court comprises of retirement benefits due and owing to them by fact of a Collective Bargaining Agreement applicable to all unionsable employees of the respondent.
7. In the court's considered view, the respondent has no arguable appeal and has also failed to demonstrate that the intended appeal if successful would be rendered nugatory if stay of execution of

judgment of the court is not granted.

8. The balance of convenience favours the payment of retirement benefits to the claimants having served the respondent for many years till retirement.

9. The application for stay of execution is declined with costs to the claimants.

**Dated, signed and delivered at Nairobi this 25<sup>th</sup> day of August 2017.**

**MATHEWS NDERI NDUMA**

**PRINCIPAL JUDGE**