



**REPUBLIC OF KENYA**  
**EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT NAIROBI**

**CAUSE NO. 821 OF 2014**

**JANET ADEMA ADEBE.....CLAIMANT**

***VERSUS***

**KENYA FRESH PRODUCE EXPORTERS LIMITED.....RESPONDENT**

**Mr. Gakira for respondent/applicant**

**Claimant/respondent in person**

**RULING**

1. The respondent/applicant seeks an order for stay of execution of the judgment and decree of the court of 31<sup>st</sup> July 2017, pending the hearing and determination of the intended appeal.
2. The claimant has sent auctioneers to proclaim and attach the respondent's trucks to realize the decretal sum of Kshs.694.187/=
3. The applicant argues that it has an arguable appeal with the probability of success. That the appeal would be rendered nugatory if stay of execution is not allowed. That the claimant is a person of straw and would not be able to repay the decretal sum if the appeal was successful.
4. The application is opposed on the grounds that the respondent only seeks to delay justice to the claimant having not demonstrated any probability of success of the intended appeal.
5. That the respondent's advocate has deliberately sought to delay conclusion of this matter during the trial and now is at it again trying to delay payment of the judgment sum.
6. That it is in the interest of justice that the claimant be paid her duly earned terminal benefits awarded by the court.

**Determination**

7. The court has perused the draft memorandum of appeal in which is advanced that:-

- (i) The appellant has a right to dismiss an employee without notice and such dismissal cannot be unlawful.

(ii) That general damages are not awardable in a contract claim and that claimant should only have been awarded payment in lieu of notice.

8. These are matters for consideration by the Court of Appeal. This court only notes the grounds of appeal for the purpose of evaluating probability of success, recognizing the right of the respondent to file an appeal.

9. The award by the court comprised –

(i) Compensation equivalent to 10 months salary in terms of Section 49 (1) (c) of the Employment Act, 2007 in the sum of Kshs.145,000/=

(ii) Terminal benefits including: -

a. One month's salary in lieu of notice of Kshs.14,500/=.

b. Gratuity in terms of Section 35 (5) in the sum of Kshs.58,000/=.

c. Overtime Kshs.440,437/=.

d. Payment in lieu of leave Kshs.50,750/=.

10. The court has noted that the terminal benefits awarded to the claimant have not been impugned in the draft memorandum of appeal and the bold statement that the court lacks jurisdiction to award general damages in contract claims in spite of the express provisions of Section 12 of the Employment and Labour Relations Court Act, CAP 234 B, 2014 read with Section 49 of the Employment Act, 2007 does not weigh much for the purpose of evaluating whether or not the intended appeal is arguable.

11. Furthermore, the applicant has not established that the intended appeal would be rendered nugatory if the stay of execution is not granted in this matter. In any event, counsel for the respondent intimated from the bar, that the respondent intended to settle this matter out of court and was already talking to the claimant in that respect.

12. Accordingly the application for stay of execution is refused with costs.

**Dated, Signed and Delivered on this 31<sup>st</sup> day of October 2017**

**MATHEWS NDERI NDUMA**

**JUDGE**