



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**  
**AT NAIROBI**  
**CAUSE NO. 2181 OF 2014**  
**TRAILINK GROUP LIMITED.....CLAIMANT/APPLICANT**  
**VERSUS**  
**KENYA LONG DISTANCE TRUCK DRIVER AND**  
**ALLIED WORKERS' UNION.....RESPONDENT**

Mr. Chigiti for applicant

Mr. F. N. Kimani for respondent

**RULING**

1. The applicant seeks *interalia* the following orders: -

i) That the court be pleased to stay execution of the judgment and subsequent orders issued on 26<sup>th</sup> May 2017 pending final determination of the appeal.

2. The application is supported on the grounds on the face of the application to wit: -

a) On 26<sup>th</sup> May, 2017 Honourable Justice Nderi Nduma delivered a judgment which the applicant is challenging.

b) On 29<sup>th</sup> May 2017, the respondent served the applicant with a letter asking the appellant to execute the Recognition Agreement that is at the centre of the appeal.

c) The applicant has an arguable appeal with good prospects of success for the reasons *interalia* set out in the draft memorandum of appeal.

d) If execution issues, then the appeal will be rendered nugatory.

3. The application is further buttressed by the supporting affidavit of Peter Njenga the Human Resource Manager of the applicant.

4. The application is opposed vide replying affidavit of Nicholas Mbugua, the Secretary General of the respondent union on the following grounds: -

1. That the intended appeal itself has no prospects of success reason being that this is matter that the applicant voluntarily initiated for negotiations at its own offices culminating with the signing of the Recognition Agreement and a Return to Work Formula and as such the allegations of coercion has no basis at all.

2. That the respondent's unionised workers have suffered and will continue to suffer if this application is granted.

3. That the applicant has not demonstrated that it is likely to suffer irreparable loss and damage if the application is not granted. That the allegations that the appeal is going to be rendered nugatory by recognizing the respondent union have no basis at all.

4. The applicant's aim is to delay and frustrate the final conclusion of the matter and this is detrimental to the respondent members who are now languishing in poverty and deserve justice and fairness.

5. In terms of order 42 Rule 6 of the Civil Procedure Rules 2010, no order for stay of execution pending appeal shall be made under sub rule (1) unless: -

1. The court is satisfied that substantial loss may result to the applicant unless the order is made.

2. That the application has been made without unreasonable delay.

3. Such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.

4. The court is satisfied that the application was made without unreasonable delay.

6. The judgment sum is high as it is in respect of many employees and the court is satisfied that the appeal may be rendered nugatory if the amount is paid and the appeal is successful.

7. The court however directs that the decretal sum being equivalent of eight (8) months salary in respect of all affected employees be deposited in an interest earning account in the joint names of the advocates for the parties within 30 days of this ruling failing which the order for stay will lapse and execution to issue.

8. However, the court is not satisfied that the appeal would be rendered nugatory if no stay is granted in respect of the order directing the applicant to recognize the respondent within 30 days of judgment. Indeed the applicant failed to recognize the union within the stipulated time and has come to court with unclean hands.

9. The court therefore issues no orders for stay in respect of the directive. The applicant is directed to sign recognize the union forthwith, effect a checkoff system and allow social dialogue to ensue at the workplace between the applicant and respondent union.

10. The final orders of the court are therefore as follows: -

(i) An order for stay is issued in respect of the award of the equivalent of eight (8) months salary to the grievants provided the judgment sum is deposited in an interest earning account in the joint names of the advocates for the parties within 14 days of this ruling failing which the order for stay of execution will abate and execution to issue immediately.

(ii) No order for stay is issued with regard to the directive by the court to the applicant to recognize the respondent union. The applicant to implement the signed Recognition Agreement with the respondent union forthwith and effect check off in respect of the union members.

**Dated, Signed and Delivered on this 24<sup>th</sup> Day of November 2017**

**MATHEWS NDERI NDUMA**

**JUDGE**