



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT & LABOUR RELATIONS**  
**COURT AT MOMBASA**  
**CAUSE NUMBER 307 OF 2015**  
**BETWEEN**  
**CHARLES OKUNGU ODHIAMBO & 28 OTHERS.....CLAIMANTS**  
**VERSUS**  
**JUJA COFFEE EXPORTERS LIMITED..... RESPONDENT**

*Rika J*

*Court Assistant: Benjamin Kombe*

*Otieno Asewe & Company Advocates for the Claimant*

*Muriu Mungai & Company Advocates for the Respondent*

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**RULING**

1. Judgment was delivered in favour of the 29 Claimants, on 16<sup>th</sup> June 2017. The Respondent was ordered to among others, pay the Claimants a total sum of Kshs. 16,433,800. The amount comprises terminal dues and compensation for unfair termination.
2. The Respondent filed an Application on 25<sup>th</sup> July 2017 seeking stay of execution of Judgment; setting aside of Judgment; and reopening of proceedings.
3. The Court granted interim stay of execution on the same date the application was filed – the 25<sup>th</sup> July 2017 – on the condition that the Respondent deposited the total sum of Kshs. 16,433,800 in Court within 14 days, failing which the Claimants would be at liberty to execute.
4. The Respondent did not deposit the money. It instead filed another Application for stay of execution during the Court vacation on 17<sup>th</sup> August 2017. Interim stay was granted a second time, by the duty Judge sitting in Nairobi. The gist of the second Application is that the Respondent cannot raise the sum of Kshs. 16,433,800, and would be compelled to close down if it was to pay this sum.
5. The Claimants oppose both Applications. In Grounds of Opposition filed on 4<sup>th</sup> August 2017, the Claimants state the Respondent has serially disobeyed the orders of the Court from inception of the

proceedings.

6. Parties agreed in Court on 21<sup>st</sup> September 2017 to have the 2 Applications considered and determined on the strength of the record. They confirmed the filing of submissions on 30<sup>th</sup> October 2017.

***The Court Finds:-***

7. The Respondent was granted adequate opportunity to respond to the Claim. The Respondent did not take this opportunity.

8. The decretal sum comprises terminal dues and compensation for unfair termination. The Claimants served the Respondent for several years. Their contracts were terminated on 18<sup>th</sup> September 2014. They have not to-date, received any terminal dues.

9. The Court has reviewed, the record carefully, and agrees with Claimants' submission that the Respondent has engaged in serial disobedience of Court Orders. The Respondent assumed certain obligations on employing the Claimants, and in terminating their contracts of employment. It is preposterous for the Respondent to argue that because employment obligations have fallen due and enforceable, the Respondent cannot pay without going out of business. Courts have no obligation to sanction that Employees are denied employment rights, so as to keep failing businesses afloat.

10. The Court allowed the Respondent its prayer for stay of execution on a condition which the Respondent has not met. The Respondent has no reason to approach the court again, and seek stay of execution upon stay of execution. The Court cannot ignore that Employees who left employment 3 years ago, after years of toil, have not been paid their terminal dues, and compensation as granted by the Court.

11. The Applications filed by the Respondent on 25<sup>th</sup> July 2017 and 17<sup>th</sup> August 2017 have no basis, and are meant by the Respondent to avoid or delay meeting its obligations to Employees.

IT IS ORDERED:-

***a) The Applications filed on 25<sup>th</sup> July 2017 and 17<sup>th</sup> August 2017 are rejected.***

***b) Costs of both Applications to the Claimants.***

***c) Claimants are at liberty to execute.***

Dated and delivered at Mombasa this 23<sup>rd</sup> day of November 2017.

James Rika

Judge