



**REPUBLIC OF KENYA**  
**EMPLOYMENT AND LABOUR RELATIONS COURT**  
**AT NAIROBI**  
**CAUSE NO. 633 OF 2014**

**(Before Hon. Lady Justice Hellen S. Wasilwa on 1<sup>st</sup> September 2016)**

**CLEOPHAS ODOYO.....CLAIMANT**

**VERSUS**

**TOYOTA KENYA LIMITED.....RESPONDENT**

**RULING**

1. The Application before Court is the one dated 16.6.2016. The Application is filed pursuant to Rule 32 of the Industrial Court Rules, the Industrial Court Act and all other enabling provisions of law.
2. The Applicant seeks orders for review of this Court's orders made on 26<sup>th</sup> August 2016.
3. The Applicant avers that on 31<sup>st</sup> March 2016, this Court awarded Judgment to the Applicant in the sum of Kshs.389,066/= as compensation for unfair termination together with costs. On 6.6.2016 costs were assessed at 140,675/=.
4. However on 26<sup>th</sup> April 2016, the Court had granted the Respondent an order of stay of execution pending appeal on condition that the decretal sum is deposited in an interest earning account in the joint names of both Counsels. That indeed the joint bank account was opened in names of both Counsels and on 10<sup>th</sup> May 2016, Kshs.389,066/= was deposited therein.
5. That however, despite this, no appeal has been filed to date and this is 3 months after the delivery of the said Judgment. No Notice of Appeal has also been served upon the Respondents hence suggesting that none has been filed. No Application has also been filed before this Court nor Court of Appeal seeking extension of time within which an appeal may be filed.
6. The Applicant therefore seeks orders that the Court reviews its orders of 26<sup>th</sup> April 2016 and direct that the decretal sum of Kshs.389,066/= plus the assessed costs of 140,675/= be released to the Claimant forthwith.
7. The Respondents opposed this Application. They filed their grounds of opposition on 11.7.2016. They aver that indeed they filed their Notice of Appeal at the Registry of Employment and Labour Relations Court on 3<sup>rd</sup> May 2016 and also wrote to the Deputy Registrar Employment and Labour Relations Court on 27<sup>th</sup> April 2016 seeking for typed proceedings of the matter. They aver that This was done within the

statutory timelines.

8. Having considered averments of both parties, I find that indeed the Respondents complied and deposited the decretal sum in a joint interest earning account as ordered by Court. Judgment was however delivered on 31.3.2016 but as per LB-5, the Respondents lodged a Notice of Appeal on 3.5.2016, 4 days later than what is required in law.

9. The Respondents have not shown that they have sought any leave to file this appeal out of time.

10. That being the position, there is no appeal properly filed, and it is therefore this Court's finding that the Respondents have breached the condition upon which the stay was granted.

11. I therefore review my orders of 26.4.2016 granting stay and order the decretal sum deposited in the joint interest earning account and the taxed costs be released to the Claimant forthwith within 7 days. In default execution to issue.

Read in open Court this 1<sup>st</sup> day of September, 2016.

**HON. LADY JUSTICE HELLEN WASILWA**

**JUDGE**

**In the presence of:**

No appearance for Claimant

No appearance for Respondent