



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**  
**CAUSE NO. 1931 OF 2013**

**SOLOMON GITHAE IRUNGU ..... CLAIMANT**

*VERSUS*

**NAIROBI WATER & SEWERAGE COMPANY..... 1<sup>ST</sup> REPOUDENT**

**RULING**

1. By a notice of motion application dated 12<sup>th</sup> July 2016, applicant seeks stay of judgment of the court delivered on 29<sup>th</sup> June 2016 pending appeal.
2. The court awarded the claimant Kshs.1,341,068.88 being terminal benefits due and owing to the claimant upon summary dismissal and compensation for wrongful summary dismissal.
3. The applicant filed a notice of appeal dated 1<sup>st</sup> July 2016. The applicant states that it has an arguable appeal, that failure to grant stay of execution would render the appeal nugatory, that the appeal was filed timeously and without any delay.
4. That the claimant would not be able to repay the decretal amount and the applicant will suffer irreparable harm.
5. The application is opposed vide a replying affidavit of the claimant sworn on 26<sup>th</sup> July 2016 and filed on the even date.
6. The claimant argues that the application is frivolous and without merit in that the court found that the claimant had been victimized by the applicant.
7. That the claimant was denied lawful and just terminal dues upon being unlawfully dismissed.
8. That the applicant has not demonstrated it has arguable grounds of appeal and only seeks to delay the matter to defeat the course of justice and abuse the process of the court.
9. That in the event, the court orders, stay of execution, the decretal sum be deposited with the court until the full determination of the applicant's appeal.

**Determination**

10. The court is satisfied that the applicant has an arguable appeal and the claimant may be unable to refund the decretal sum if the appeal is successful.

11. However, the claimant has waited to be paid his terminal benefits since the date of dismissal on 27<sup>th</sup> September 2013. The interest of justice demands that, the claimant be allowed to enjoy part of the judgment proceeds pending the hearing and determination of appeal.

12. The court therefore grants stay of execution of the judgment of the court on 29<sup>th</sup> June 2016 except with respect to the following payments:

Notice pay	-	Kshs.62,276.10
Salary arrears	-	Kshs.45,000.00
Salary accrued during		
Suspension	-	Kshs.175,828.10
Service pay	-	Kshs.276,301.30
Payment in lieu of		
leave	-	Kshs.3,143.38
Total	-	Kshs.562,548.88

which amount should be paid to the claimant within fourteen (14) days of this ruling.

13. The balance of Kshs.778,520.00 be deposited with the court within fourteen (14) days from the date of this ruling. If the applicant fails to abide by the ruling of the court, within fourteen (14) days, the order for stay of execution will automatically lapse and execution to issue.

**Dated and delivered at Nairobi this 2<sup>nd</sup> day of December 2016**

**MATHEWS NDERI NDUMA**

**PRINCIPAL JUDGE**