



**REPUBLIC OF KENYA**

**EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA**

**CAUSE NO. 19 OF 2011**

**JOHN GACHAU GITONGA..... CLAIMANT**

**VERSUS**

**MISS NDUTA MBILE.....RESPONDENT**

**RULING**

1. Notice of Motion application dated 12<sup>th</sup> March, 2015 was filed on 16<sup>th</sup> March 2015 seeking that the application;
  - a. Be certified urgent
  - b. The court grants leave to R. H. Wangwa & Co Advocates to come on record in place of the firm of M/s Mitey & Associates
  - c. That pending the hearing and determination of this application inter-parties, there be stay of execution of the warrant of attachment by Keysia Auctioneers, dated 4<sup>th</sup> March, 2015
  - d. That there be stay of execution of the Decree filed on 18<sup>th</sup> September, 2012 pending the hearing and final determination of the Appeal filed by the Respondent herein.
3. Stay of execution was granted pending the hearing of this Application inter-partes on 19<sup>th</sup> March, 2014.
4. At the hearing of the Application on 6<sup>th</sup> May, 2015 it was communicated that prayers a, b and c were spent since attachment warrants were executed before the Claimant/Respondent was served with the interim orders.
5. It was submitted that only prayer d was still a life, that is stay of execution pending Appeal.
6. The Judgement was delivered by Hon. Justice Marete on 28<sup>th</sup> August, 2012 and a Notice of Appeal was filed on 5<sup>th</sup> September, 2012.
7. The application is founded on the grounds set out on the face of the application and the supporting affidavit of Miss Nduta Mbire the Respondent.
8. A replying affidavit was deposed to by the Claimant and was filed on 4<sup>th</sup> May, 2015 in opposition to the Application.

**Determination**

9. The court notes that the Applicant filed an application to review the impugned judgement on 11<sup>th</sup> June 2013 and the same was dismissed by the trial Judge on 1<sup>st</sup> October, 2013 for lack of any merits.
10. The Applicant had meanwhile filed Notice of Appeal on 1<sup>st</sup> September, 2012 and as at the time of hearing this Application the court was not informed what steps had been taken to prosecute the Appeal.
11. Indeed the court is not aware if a memorandum of Appeal has been filed by the Applicant almost three (3) years from the date the judgement was delivered on 28<sup>th</sup> August, 2012.
12. The Applicant has not demonstrated that she has an arguable appeal.
13. Furthermore, the Applicant has not shown that the Appeal would be rendered nugatory if the stay of execution of the judgement of the court is not granted.
14. Indeed execution of the judgement had already taken place as at the time of hearing this Application.
15. The balance of convenience is in favour of allowing the Claimant to enjoy the fruits of his judgement having already incurred expenses in execution of the said judgement.
16. The Applicant has not prosecuted the intended appeal expeditiously considering the circumstances of the case but instead prioritized an Application for review in the trial court which Application was dismissed.
17. The Application lacks merit and same is dismissed with costs.

**Dated and Delivered at Nairobi this 29<sup>th</sup> Day of May 2015**

**MATHEWS N. NDUMA**

**PRINCIPAL JUDGE**