



**REPUBLIC OF KENYA**  
**IN THE INDUSTRIAL COURT**  
**AT MOMBASA**  
**CAUSE NUMBER 277 OF 2014**  
**BETWEEN**  
**BERNARD GONZALE LANDO.....CLAIMANT**  
**VERSUS**  
**MEHTA ELECTRICAL LIMITED.....RESPONDENT**  
**RULING**

1. The Respondent has filed an application dated 15th April 2015, seeking stay of execution of decree, emanating from Award in the Cause, delivered on 13th March 2015. Stay is sought pending hearing and determination of the Intended Appeal.
2. The Application is supported by the affidavit of the Respondent's General Manager Kirankumar Bhatia, sworn on 15th April 2015.
3. The Claimant filed a Replying Affidavit on 11th May 2015, which is accompanied by a Notice of Preliminary objection.
4. The Respondent argues it has filed a Notice of Appeal; sought the proceedings; and lodged the Application for Stay in good time.
5. It was ordered to deposit the sum of Kshs. 220,278 in Court on 16.4.2015. This decretal amount has been deposited in Court.
6. Further, the Respondent argues it has a good and arguable Appeal as shown in the draft Memorandum of Appeal. Lastly the Respondent submits the Claimant is unemployed, and has not shown he would be able to refund the Respondent, in event the Appeal succeeds.
7. The Claimant submits the Notice of Appeal attached to the application is defective. It shows Judgment was delivered by Judge Makau, while the correct position is that Judgment was delivered by this Court. The Notice is not signed by the Deputy Registrar of the Court.
8. It has not been shown there is an arguable Appeal. The draft Memorandum indicates the Appellant to be Peponi Hotel Limited, a stranger in the proceedings. Lastly the Claimant argues if the Respondent deposited the sum of Kshs. 220,278, the conditional stay would only continue to hold if the deposit was made within the time given by the Court.

9. The Claimant prays the Court to reject the application and order the amount deposited in Court, is released to the Claimant.

*The Court Finds:-*

10. The Respondent has not demonstrated it has an arguable Appeal, in the generalized 2 grounds contained in the Memorandum of Appeal.

11. The Memorandum of Appeal and the Notice of Appeal are fundamentally defective on the grounds submitted by Mr. Anaya. This Court is not satisfied there is a proper Appeal filed, let alone an arguable Appeal.

12. The Respondent alleges if stay is not granted its operations will grind to a halt. It has not been demonstrated how this is so.

13. The Respondent has not shown why it is dissatisfied with the entire Award of the Court. An Order for release of the Claimant's Certificate of Service was made in favour of the Claimant, in accordance with Section 51 of the Employment Act. It is not made clear why even this should be kept away from the Claimant.

14. The Order for deposit of the decretal sum was made on 16.4.2015. Deposit was to be made within 14 days which lapsed on 1st May, 2015. The Deposit Receipt shows the money was received by the Court on 14th May 2015. This was outside the time prescribed by the Court.

15. In all the Respondent has not shown there is ground to Stay Execution of the decree. The Employer's right of Appeal must be weighed carefully against the Employee's right to an effective remedy.

IT IS ORDERED:-

*a. The application for Stay of Execution is declined.*

*b. The sum of Kshs. 220,278 shall be released to the Claimant's Advocate forthwith.*

*c. No orders on the costs of this application.*

Dated and delivered at Mombasa this 22nd day of May 2015.

James Rika

Judge