



**REPUBLIC OF KENYA**

**EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA**

**PETITION NO 33 OF 2013**

**JOSEPH MUTUURA MBEERIA .....1<sup>ST</sup> PETITIONER**

**NAFTALY RUGARA MUIGA .....2<sup>ND</sup> PETITIONER**

**VERSUS**

**THE CABINET SECRETARY FOR.....**

**EDUCATION SCIENCE AND TECHNOLOGY.....1<sup>ST</sup> RESPONDENT**

**THE HON. ATTORNEY GENERAL.....2<sup>ND</sup> RESPONDENT**

**AND**

**THE COUNCIL OF JOMO KENYATTA**

**UNIVERSITY OF AGRICULTURE**

**& TECHNOLOGY .....INTERESTED PARTY/APPLICANT**

Mr. Oluoch Olunya with B. G. Kariuki for Applicant/Interested Party

Mr Muigai for Petitioners/Respondents

M/s Chesire for Attorney General

**RULING**

1. The Notice of Motion Application was filed on 12<sup>th</sup> March, 2015 seeking for stay of execution of the Judgement and consequential orders delivered on 19<sup>th</sup> day of September 2014, pending the hearing and determination of the reference.
2. The Application is founded on the grounds set out in paragraphs 1 – 10 of the Notice of Motion and supported by an Affidavit of Mr Oluoch Olunya Advocate for the Applicants.
3. The Application is opposed and a Notice of preliminary objection was filed by Mr Musyoka Muigai for the petitioners.
4. The nub of the Application is that the Applicant having filed an application for stay of execution pending appeal, it transpired at the Court of Appeal that the notice of Appeal was filed

out of time culminating in an application for extension of time to file notice of appeal in the court of appeal.

5. The Application in the court of appeal was handled by a single Judge and ruling was issued dismissing the Application for extension of time.

6. Dissatisfied with the Court of Appeal's ruling, the Applicant has lodged a reference in the Court of Appeal of Kenya at Nairobi.

7. This Court having been notified of the development at the Court of appeal, discharged the Interim Orders on 3<sup>rd</sup> November, 2014 hence this application for stay of execution pending the reference in the Court of Appeal

8. This is a novel application. The fact of the matter is that once the Court of Appeal struck off the notice of Appeal for late filing this court could no longer legitimately deal with the matter of stay of execution of the judgment of this court delivered on 19<sup>th</sup> September, 2014.

9. It is from the Court of Appeal Judge who dismissed the Application for extension of time, the Applicant could seek stay of the ruling pending the hearing and determination of the reference.

10. This court is *functus officio* and downed its tools upon delivery of its judgement, there being no valid Appeal pending against the same.

11. The Application is dismissed with costs.

**Dated and Delivered at Nairobi this 15<sup>th</sup> day of May 2015**

**MATHEWS N. NDUMA**

**PRINCIPAL JUDGE**