



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT AT NAIROBI
CAUSE NUMBER 1292 OF 2011

BETWEEN

SETH PANYAKO.....CLAIMANT

VERSUS

**THE KENYA UNION OF DOMESTIC, HOTELS,
EDUCATIONAL INSTITUTIONS, HOSPITALS AND ALLIED WORKERS.....
RESPONDENT**

RULING

Award in this Cause was read in favour of the Claimant, on 10th December 2013. The Respondent was ordered to pay to the Claimant general damages of Kshs.850,000, within 30 days of the delivery of the Award.

On 11th December 2013, the Respondent lodged its Notice of Appeal at the Industrial Court Registry. This was followed up by an Application for Stay of Execution, filed on 20th December 2013.

The Application was brought before the Court under Certificate of Urgency on 20th December 2013, and the Court granted interim order for stay of execution, pending hearing *inter partes* on 14th January 2014.

The respondent had not served the Claimant by 14th January 2014. The interim order for stay of execution lapsed on 14th January 2014.

The Respondent scheduled its Application at the Registry, for hearing on 4th March 2014. Hearing proceeded on 4th March 2014.

The Respondent relies on the Supporting Affidavit of its General Secretary Albert Njeru, sworn on 18th December 2013, and on further grounds stated on the face of the Application.

The Claimant adopts Grounds of Opposition filed on 20th January 2014.

Upon reading the contents of the Application and the Grounds of Opposition; and Upon hearing the Submissions made by Counsel for the Respondent and by the Claimant acting in Person; the *Court Finds and Orders:-*

1. The Respondent has not demonstrated requisite matters of law raised by its intended Appeal, as envisaged under section 17(2) of the Industrial Court Act No. 20 of 2011. No Draft Memorandum of Appeal was availed to this Court, and no pure points of Law are revealed in the Supporting Affidavit, or Submissions made by the Respondent in Court.

2. An Appeal from this Court to the Court of Appeal under the above Law, must be confined to matters of Law. In arguing an Application for Stay of Execution, such matters must be demonstrated. The law does not intend that stay of execution, operates as a transfer of jurisdiction, where Parties take their legal and factual differences to the Superior Court for a re-hearing. The right of appeal is a limited right.

3. The interim stay of execution order lapsed on 14th January 2014. The Award was to be satisfied within 30 days of its delivery. The Respondent did not seek extension of the order, and delayed in notifying the Claimant on the filing and the hearing of the Application. The 1st Ground of Opposition, that the Application is aimed at delaying the administration of justice therefore, appears to have merit.

4. Lastly, the Claimant is himself a General Secretary of a notable Trade Union, and like Mr. Albert Njeru, can hardly be said to be a man of straw who would struggle or fail to repay the sum of Kshs.850,000, in event the Appeal is successful. There are no grounds to warrant stay of execution of the Award. *IT IS ORDERED:-*

(a) The Application dated 18th December 2013 is rejected.

(b) No order on the costs.

Dated and delivered at Nairobi this 31st day of March 2014

James Rika

Judge