



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA

AT NAIROBI

CAUSE NO. 312 OF 2010

FRED A. ODHIAMBO.....CLAIMANT

VERSUS

THE HON. ATTORNEY GENERAL1ST RESPONDENT

POSTAL CORPORATION

OF KENYA.....2ND RESPONDENT/APPLICANT

Mr Kenneth Kiplagat for the Respondent / Applicant

Mr. Oyuke for the Claimant / Respondent

RULING

1. The Applicant / 2nd Respondent by a notice of motion dated 3rd December 2013 seeks an order for stay of execution of the judgment and orders of the Court dated 25th October 2013 pending the hearing of the intended Appeal.

2. The Applicant filed a notice of Appeal dated 25th October 2013 on 8th November 2013. The grounds for the intended Appeal are set out in the Notice of Motion and may be summarized as follows;

There is no legal determination on the issue of liability and apportionment as between the 1st and 2nd Respondents despite the same being a central issue as per the parties pleadings and submissions before the Court.

3. In fact, this is the only issue raised against the judgment of the Court.

The Court however notes that, on 27th November 2013, prior to the filing of this application, it noted an omission on the judgment wherein it had severally referred to the 'Respondent' when it was intended to refer to the 2nd Respondent, the employer of the Claimant.

4. In terms of **Rule 33** of the **Industrial Court Rules 2010**, the Court rectified the error on page 74 of the judgment to make it clear that the award was against the 2nd Respondent and notified the parties accordingly. This being the case, the Court notes that it has made a determination on who the employer of the Claimant was and made an award for damages against the 2nd Respondent for the unlawful

termination of employment.

5. That the 1st Respondent did not participate in the hearing of this matter and it is clear from a reading of the Judgment as a whole that the employer was responsible to make good the award.

6. In terms of **Section 12** of the **Industrial Court Act, 2012** and the **Employment Act, 2007** this Court has jurisdiction to determine disputes as between an employee and his / her employer only. It follows that no third parties may be found liable by this Court to pay compensation for unlawful termination of employment.

7. In the Court's view the intended appeal, if based only on the grounds set out in this application is not arguable and the Claimant is entitled to enjoy the fruits of his award without any further delay.

8. The 1st Respondent was not an employer of the Claimant and therefore there cannot be any legal basis for apportionment of liability as between the 1st and 2nd Respondents. The employment contract between the Claimant and 2nd Respondent was a matter of common cause.

9. In any event, it has not been submitted that the Claimant would be unable to repay the proceeds of the award if the Appeal is successful. The appeal would therefore not be rendered nugatory by the execution of the judgment of this Court.

Accordingly the Application is dismissed with costs.

Dated and Delivered at Nairobi this 30th day of May, 2014.

MATHEWS N. NDUMA

PRINCIPAL JUDGE