



**REPUBLIC OF KENYA**  
**IN THE INDUSTRIAL COURT OF KENYA AT KISUMU**  
**CAUSE NO. 20 OF 2014**

(Before Hon. Justice Hellen S. Wasilwa on 19<sup>th</sup> November, 2014)

**SHADRACK ABRAHAM KISONGOCH .....CLAIMANT**

**-VERSUS-**

**KENYA AIRPORTS AUTHORITY ..... RESPONDENTS**

**R U L I N G**

The application in court is the one dated 22.10.2014 brought under certificate of urgency by the applicant respondents herein seeking order for stay of execution pending appeal. The application is brought through a notice of motion under Rule 16 and Rule 32 of the Industrial Court (Procedure) Rules 2010 and Order 42 rule 6 of the Civil Procedure Rules and all other enabling provisions of the law.

The applicants filed their notice of appeal on 23rd September 2014 and their main point of contention is that they have an arguable appeal and that the respondent would be unable to make any refunds to them in case the appeal succeeds. The respondent on the other hand opposed the application. His contention is that the application is meant to deny him fruits of his judgment and cause delay.

Under Order 42 rule 6(2)-

**“ No order for stay of execution shall be made under sub rule(1) unless;**

**(a) A court is satisfied that substantial loss may result to the applicant unless the order is made and that the application is made without unreasonable delay and,**

**(b) Such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.”**

The applicants filed this application on 22.11.2014. The judgment being appealed against was delivered on 17.9.2014. I would consider this reasonable time for filing the application.

The applicants have also argued that they stand to lose considerably if the stay order is not granted as the respondent is not in a position to refund the decretal sum in case the appeal succeeds. The applicants cited various authorities amongst them **H-CT MSA C. APPEAL NO. 55/2013 (J. Kasango)** where **ABN Amro Bank N.V -Vs- Le Monde Foods Ltd** Civil Application No. Nai 15/2002 was cited and where the court found that the burden of proof shift to the respondent to show he would be in a position to refund the decretal sum paid to him if the pending appeal were to succeed.

It is the applicant's contention that the respondent has not demonstrated this aspect as such the application should be allowed.

It is true that the respondent has not demonstrated that he is in a position to refund the decretal sum if paid to him in case the appeal succeeds.

Given that the applicants came to court within reasonable time without any delay and given that they are willing to deposit the decretal sum in court, I order that the application for stay succeeds on the condition that:-

**1. The entire decretal sum be deposited in a joint interest earning account held in the names of counsel for the applicants and the respondent within 30 days.**

**2. In default execution to issue.**

**HELLEN S. WASILWA**

**JUDGE**

**19/11/2014**

**Appearances:-**

Karanja h/b for Iseme Kamau for Applicants present

Respondent in person present

CC. Wamache