



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT AT NAIROBI
CAUSE NUMBER 1199 OF 2011

BETWEEN

ROSEBELL WAMBUI MUTHEE
..... CLAIMANT

VERSUS

FREIGHT IN TIME LTD

.....RESPONDENT

Rika J

CC. Leah Muthaka

Mr. Kimani instructed by Ndumu Kimani & Company Advocates for the Claimant

Mr. Arum instructed by Otieno Arum & Company Advocates for the Respondent

RULING

The Court made an Award in favour of the Claimant, dated 12th February 2013. The Respondent was dissatisfied with the decision, and promptly notified the Court of its intention to proceed on Appeal at the Kenya Court of Appeal.

In an application dated 2nd May 2013, the Respondent seeks to stay execution of the Award, pending hearing and finalization of the Appeal. The application is grounded on the affidavit of Jignesh Ghelabhai Desai, Respondent's Group Financial Controller, sworn 2nd May 2013. He also filed a further affidavit sworn 21st May 2013.

The Claimant relied on her replying affidavit, sworn on 15th May 2013. The application was canvassed through the respective Parties' Advocates on 21st June 2013.

The Court Finds and Orders:-

1. As stated by this Court in *Industrial Court Cause Number 1449 of 2011, between Kenya National Private Security Workers Union v. Kenya Kazi Security Services Limited, (2013 eKLR)*, the Industrial Court must be cautious in keeping employees away from enjoyment of their fruits of litigation. The Applicant must demonstrate that it has an Appeal grounded on recondite matters of law, not recycled

arguments on facts arising from the proceedings of the Industrial Court. There must be special circumstances to justify stay. In this Court, the principle that outweighs all others in considering stay of execution, is that employees must be allowed to enjoy the fruits of their Awards, unless there are strong and special reasons, demanding they have to wait.

2. It must be shown by the Applicant that unless stay is granted, the subject of the proceedings would be destroyed, or a situation of complete helplessness foisted upon the Court of Appeal, where the right of appeal is paralyzed, and no judgment of the Court of Appeal is capable of returning the parties to the status quo.

3. Nothing in the affidavits sworn by Jignesh, or on the face of the Notice of Motion, or the submissions made by Mr. Arum for the Respondent, justify grant of stay of execution.

4. The Respondent seeks leave of the Court to appeal out of time. It states that there was no proper notice issued on the Respondent, preceding the delivery of the Award. Ordinarily this Court takes the Parties Cell Phone Numbers, and ensures the Advocates or Parties are called, and notified of the delivery of the Court's decisions. It is however not clear from the Court's record if the parties were notified before the Award was read, either in writing or by phone. In view of this, the Court Orders:-

- (a) ***Stay of execution is refused.***
- (b) ***Interim Order of stay is vacated.***
- (c) ***Leave to appeal out of time granted as prayed.***
- (d) ***No order on the costs.***

Dated and delivered at Nairobi this 5th day of July 2013

James Rika

Judge