



**REPUBLIC OF KENYA**

**Industrial Court of Kenya**

**Cause 220N of 2009**

**KENYA PETROLEUM OIL WORKERS UNION..... CLAIMANT**

**VS**

**MAKUTANO KENOL SERVICE STATION (MARAGUA) ....APPLICANT/RESPONDENT**

**RULING**

The application before court is the one dated 17<sup>th</sup> August 2011. The Application is brought through a Notice of Motion dated the same day. The same is filed under Section 59 (2) (d) of the Constitution of the Republic of Kenya, Section 12 of the Labour Institution Act No.12 of 2007, Rule 16 and 36 of the Industrial Court Rules, the Judicature Act and all other enabling provisions of the law.

The Applicant seeks orders for stay of execution pending the hearing and determination of an Appeal that the Respondents have filed. The Application is grounded on an affidavit sworn by William Mbote and the grounds that an award was entered against the Respondent/Applicant herein. That the Respondent/Applicant being dissatisfied with the judgment herein has appealed against it. That if the application does not succeed, the appeal would be rendered nugatory. The Applicant further contend that the appeal has overwhelming chances of success and the claimant will not be prejudiced if the application succeeds.

In the affidavit of the applicant, they state that the Claimant/Respondent do not have any property in their possession nor a stable employment through which the Applicant herein will be guaranteed to recover from the claimant/Respondent in the event that the money is paid out.

They also aver that they are ready and willing to furnish security pending the hearing and determination of the appeal by depositing in a Joint Interest earning account operated by the Advocates for both parties to the suit.

The Respondents oppose this application. They submit that this application is an abuse of the court process. They say that the Respondent had a chance to be heard by this court but they deliberately failed to attend and hearing proceeded in their absence. They should therefore not be allowed at this stage to derail the respondents/ Claimants from getting the fruits of the judgment.

Having heard both parties, the Applicants contend that they have appealed against the judgment of this court. They annexed an exh WM 1 a copy of a receipt for payment of a notice of appeal. They however never annexed the said notice as proof of filing the said appeal. This receipt is dated 8<sup>th</sup> August, 2011. At the time, this application is being determined no attempt had been made to exhibit before court copies of the appeal papers or any indication of the position of the appeal if filed. The applicants have not also

demonstrated before this court that their appeal if filed has overwhelming chances of success.

I find that the application by the applicants has no merit and it is hereby dismissed with costs to the Respondent/Claimants.

Signed, dated and delivered in court at Nairobi this 29<sup>th</sup> day of November, 2012.

**HELLEN WASILWA**

**JUDGE**

**Appearances:**

John Obure for Claimant

No appearance for Gakoi Maina &

Company Advocates for Respondent

Rachel Gichuki Court Clerk