



REPUBLIC OF KENYA

IN THE INDUSTRIAL COURT AT NAIROBI

CASE NUMBER 822 of 2012

**BETWEEN**

ANTHONY MULAKI .....  
.....CLAIMANT

**VERSUS**

ADDAX KENYA LIMITED... ..  
..... RESPONDENT

*Rika J*

CC.

*Kidemi*

*Mr Nyaribo for the Claimant*

*Mr Kimani for the*

*Respondent*

**RULING**

The Court delivered an Award on 13<sup>th</sup> June 2013, granting the Claimant one of his prayers relating to rent arrears, calculated at Kshs 833,916.30.

The Respondent filed a Notice of Appeal dated 18<sup>th</sup> June 2013, received at the Industrial Court Registry on 27<sup>th</sup> June 2013.

This was followed up with an Application dated 15<sup>th</sup> June 2013, in which the Respondent sought stay of execution of the Award, pending the hearing and determination of the intended Appeal. The Application

is supported by the Affidavits of Hellen Nyambura, Respondent's Finance Manager, sworn on 15<sup>th</sup> July, 2013 and on 30<sup>th</sup> July, 2013 respectively. The Application is also supported by 6 Judicial Authorities sourced from the Industrial Court and the High Court of Kenya.

The Application is opposed. The Claimant relied on his own Affidavit which he swore on 25<sup>th</sup> July 2013. He attaches several exhibits to the Affidavit. He urges the Court to adopt its own principles on the subject of stay of execution pending Appeal, stated in two previous disputes.

The Application was heard on the 19<sup>th</sup> September, 2013.

Upon evaluation of the Parties' respective Affidavits, legal argumentation, and Judicial Authorities.

*The Court Finds and Orders:*

1. The Respondent has not demonstrated strong and special circumstances, to warrant that its former employee waits for the outcome of the Intended Appeal, to enjoy the fruits of his Award.
2. The Respondent has not shown that its Appeal is rooted on recondite matters of law. The Court did not re-write the Parties' contract, by granting the Claimant house rent allowance. House rent allowance is given to employees by Section 31 of the Employment Act 2007. Every contract of employment shall be read and construed as if it were a contract made in accordance with, and subject to the provisions of the Employment Act 2007. Where the Court enforces terms and conditions of employment that are basic under Section 26 (1) of the Employment Act 2007, such
3. The Claimant has in any event, shown he is propertied, and able to repay the sum Awarded to the Respondent. He has various pieces of land a Motorable Honda car. He is an employable Salesperson, with sufficient skills and technical know-how of the Petroleum Industry. After the Respondent summarily dismissed him, there is evident to show he has at one time secured employment from within the Petroleum Industry earning a basic salary of Kshs 200,000 per month. He is young and employable. This is not a litigant who would be unable to repay a sum of Kshs 833,916.30.
4. The Court has also considered that the Claimant's contract of employment with the SGS company, was terminated on 15<sup>th</sup> July, 2013 on the ground that SGS had received

information that the Claimant has pending litigation with the Respondent. This situation persuades the Court that the employee must be assisted by the Court in assessing the sum Awarded, which sum would cushion him against the immediate social risks arising from his unemployment.

**IT IS HEREBY ORDERED:**

- a. **The Application dated 15<sup>th</sup> July 2013 is rejected.**
- b. **The sum Awarded to the Claimant be released to his Advocates forthwith.**
- c. **No order on the costs.**

Dated and delivered at Nairobi this 30<sup>th</sup> day of September 2013

James Rika

Judge