



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

CIVIL CASE NO. E005 OF 2021

LUCY WAIRIMU NJIHIA.....PLAINTIFF/APPLICANT

VERSES

JARIKA COUNTY LODGE LIMITED.....1<sup>ST</sup> DEFENDANT / RESPONDENT

GEORGE MUIGAI NJIHIA.....2<sup>ND</sup> DEFENDANT / RESPONDENT

DIRECTIONS

1. This matter was in court on **18<sup>th</sup> March 2021** for the hearing of the applicant's application dated **1<sup>st</sup> March 2021**. The respondents vide an affidavit of service dated **17<sup>th</sup> March 2021** seemed to have been served but they never entered any appearance. The court therefore heard the applicant ex-parte and reserved the ruling for **15<sup>th</sup> April 2021**.
2. Through electronic filing, the court on **19<sup>th</sup> March 2021** received an application by the respondents seeking to set aside the proceedings of **18<sup>th</sup> March 2021** on the grounds that they had not been served and that the application was placed in their premises and only discovered on **18<sup>th</sup> March 2021** that the matter was due for hearing. It was however late in the day to seek audience with the court because of the new protocols of virtual hearing.
3. The court had by then left with the original file so as to write the ruling and it was not possible to have the original placed in the court file. This court was unable to come back as it was to attend a training and thereafter proceed with the Easter vacation.
4. Looking at the above circumstances this court does not find it therefore prudent to proceed to write a ruling as it had intimated. As a matter of fact, the court had directed that the defendant's application be served and be heard on **13<sup>th</sup> April 2021**. Again this date was not feasible due to the closure of the court by the Honourable Deputy Chief Justice because of the Covid pandemic in which we lost one of our staff member.
5. I find the prompt action by the respondents to set aside the proceedings of **18<sup>th</sup> March 2021** to be reasonable in the circumstances. It was filed without delay which in this case they could not be faulted for not placing it in the file as explained above.
6. The court in any even had not made any ruling regarding the applicants' application of **1<sup>st</sup> March 2021**. Allowing the respondents to challenge the said application is in my humble view prudent in the circumstances and it will save both the court and the parties time. The issues raised in this case regarding the **1<sup>st</sup> respondent** are weighty and it shall be necessary to hear both parties on merit.
7. For the above reasons, it is hereby ordered that;

**a. The proceedings herein of 18<sup>th</sup> March 2021 are hereby set aside with costs to the plaintiff/applicant.**

**b. The defendant's application dated 19<sup>th</sup> March 2021 is hereby allowed to the extent that they are hereby granted 14 days to file and serve their replying affidavit, if any.**

**c. The plaintiff is hereby granted leave to file any reply if any within 7 days after service.**

**DATED SIGNED AND DELIVERED ELECTRONICALLY AT NAKURU THIS 29<sup>TH</sup> APRIL 2021**

**H. K. CHEMITEI**

**JUDGE**