



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU

CAUSE NO. 23 OF 2012

(Originally Nairobi Cause No. 1316 of 2012)

KENYA UNION OF COMMERCIAL, FOOD & ALLIED WORKERS.....CLAIMANT

v

UKWALA SUPERMARKET LIMITED.....RESPONDENT

RULING

1. Ongaya J delivered a judgment on 18 July 2014 in which he found and held that the Respondent had discriminated against the 30 Grievants in regard to payments under a redundancy scheme and ordered the Respondent to pay each of the 30 Grievants Kshs 10,000/- each.
2. The Respondent being aggrieved with the judgment filed a Notice of Appeal on 1 August 2014 and on 20 November 2015, it filed a motion under certificate of urgency seeking stay of execution pending appeal.
3. The motion was certified urgent and was fixed for *inter partes* hearing on 7 December 2015, but because the Union sought more time to respond it was rescheduled to 1 February 2016.
4. When the motion was called out on 1 February 2016, the Respondent's counsel was not present and the Union's representative applied to have it dismissed.
5. The Court dismissed the motion and on 4 February 2016, the Respondent again moved the Court under urgency seeking the reinstatement of the dismissed application.
6. Among the reasons advanced in support of the motion are that the Respondent and its counsel were ready to proceed on 1 February 2016 but they arrived in Court after the application had been dismissed and that counsel had put a request to a colleague to hold brief and that the mistakes of counsel ought not to be visited upon parties.
7. In opposing the motion, the Union urged that it was meant to delay the finalization of the dispute since judgment had been delivered in 2014, and the Respondent only woke up when prompted by the Union.
8. The Court has duly considered the motion and oral submissions.
9. On the question whether the Respondent had gone to slumber, there is merit to the suggestion as the judgment was delivered on 18 July 2014 and the motion which was dismissed, and is sought to be reinstated was only filed on 20 November 2015, well over one year after judgment.

10. On the merits of the present application, the Respondent has not disclosed what time its counsel arrived in Court. There has been no disclosure on whether an advocate was requested to hold brief and the identity of such advocate.

11. There is also no disclosure on the identity of the clerk who was sent. He or she has also not sworn any affidavit to confirm whether indeed he was in Court.

12. Parties seeking the kind of orders sought under the motion herein should make candid, frank and honest disclosure of all relevant facts. That appears to be lacking in the instant case.

13. The Court therefore declines the invitation by the Respondent to reinstate the application dated 19 November 2015.

14. The motion dated 4 February 2016 is therefore dismissed with costs to the Union.

Delivered, dated and signed in Nakuru on this 1st day of April 2016.

Radido Stephen

Judge

Appearances

For Union Mr. Nyumba, Industrial Relations Officer

For Respondent Ms. Muthoni instructed by Karanja-Mbugua & Co. Advocates

Court Assistant Nixon