

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAIROBI

MISC. APPLICATION NO. E258 OF 2023

(Before Hon. Lady Justice Agnes Kitiku Nzei)

NELSON OCHIENG OPONDO.....APPLICANT

VERSUS

SECURITY GUARD SERVICES LIMITED ...RESPONDENT

RULING

1. According to the Court's record herein, the Applicant/Respondent (**Nelson Ochieng Opondo**) filed a Notice of Motion dated 1st November, 2023 seeking the following Orders:-

- (a) *That the Court do adopt the Award of the Director of Occupational Safety & Health Services in the sum of **Kshs.468,442.2** granted in favour of the Applicant against the Respondent, with interest at Court rates from the date of Award.*
- (b) *That a decree do issue accordingly for execution.*

(c) That costs of the application be borne by the Respondent.

2. The said application is shown to have come up for hearing **on 23rd January, 2024**. According to the Court's record, Counsel for the Applicant/Respondent attended Court on the said date while there was **no** appearance on the part of Respondent/Applicant **(Security Guards Services Limited)**. Counsel for the Applicant/Respondent moved the Court to allow the application, and the Court **(Dr. Jacob Gakeri, J)** allowed the same in the following terms:-

“The Notice of Motion dated 5th February, 2020 is adopted as a Judgment of this Court i.e the sum of Kshs.468,442.2/=”.

3. Subsequently, the Applicant/Respondent filed a Party and Party Bill of Costs dated 16th May, 2024, but which the Taxing Officer, **Fredrick M. Nyamora (Senior Principal Deputy Registrar)**, struck off with no order as to costs vide his Ruling shown to have been delivered on 4th March, 2025.

4. On 11th April, 2025, the Respondent/Applicant filed an urgent **Notice of Motion dated 8th April, 2025** seeking the following Orders:-

(a) *Spent.*

(b) *That the Court be pleased to grant a stay of execution of the order and decree **dated 23rd January, 2024** and all consequential orders pending **inter-parte** hearing and determination of the application.*

(c) *That the Court be pleased to set aside the order and decree **dated 23rd January, 2024** and all consequential orders, and to grant the Applicant leave to oppose the application.*

(d) *That costs of the application be provided for.*

5. The application sets out on its face the grounds on which it is founded, and is anchored on the supporting affidavit of **Earnesto Kingondu**, the Respondent/Applicant's Operations Manager, sworn on 9th April, 2025. It is deponed in the said supporting affidavit, **inter-alia**:-

(a) *that the Respondent/Applicant was **not** served with a hearing notice for the application and that*

its right to fair hearing was infringed, hence the prayer for amends.

(b) that the matter was heard on 16th January, 2024, which date the Respondent/Applicant was not aware of.

(c) that on 24th March, 2024, Auctioneers' went to the Respondent/Applicant's offices and proclaimed its properties, and that there is a real threat of execution, which will result in substantial loss, irreparable damage and detriment.

6. The foregoing application, which is **now** before me for determination, was placed before the Duty Court on 14th April, 2025, which granted prayer (b) above in the interim.

7. The application is opposed by the Applicant/Respondent vide a replying affidavit of **Namada Simoni Advocate** sworn on 28th May, 2025. It is deponed in the said replying affidavit, ***inter-alia***:-

*(a) that the application for adoption of the DOSH award and a hearing notice were served upon the firm of **Muma Nyagaka & Company Advocates**, then on record for the Respondent/Applicant.*

- (b) *that the application for adoption was heard on 16th January, 2024, and was adopted as a Judgment of the Court on 23rd January, 2024.*
- (c) *that when the matter proceeded to taxation of the Applicant/Respondent's bill of costs, taxation notice was similarly served upon **Muma Nyagaka & Company Advocates**, who had received previous notices.*
- (d) *that upon being notified of change in representation, the Applicant/Respondent served all subsequent notices on the Respondent/Applicant personally.*

8. Documents annexed to the said replying affidavit include a copy of an affidavit of service, sworn on 30th November, 2023 by one **Owuor O. Reen**, demonstrating that the Notice of Motion dated 1st November, 2023 and a hearing notice thereon (**for 16th January, 2024**) had on 28th November, 2023 been served on **Muma Nyagaka & Company Advocates**.

9. The single issue for determination, at this stage, is whether the prayer for setting aside of the **order dated 23rd January, 2024 and the decree issued thereupon is merited.**

10. According to the Court's record, a representative of **Namada & Company Advocates** attended the Court's Registry on a date that is not indicated and in her presence, **the application dated 1st November 2023 was fixed for hearing on 16th January, 2024.**

11. No proceedings are shown to have been taken by the Court **on 16th January, 2024;** and the Court's record does **not** show that a different date was given either by the Court or at the Court's Registry for hearing of the said application.

12. On 23rd January, 2024, however, the application came up for hearing, and orders were given as stated in paragraph 2 of this Ruling. I have seen in the Court file an email dated 16th January, 2024, sent to the Applicant/Respondent's Advocates by the Court, informing them that the application had been scheduled **for hearing on 23rd January, 2024.** I have **not**

seen anything on record to suggest that the Respondent/Applicant was **also** notified that the application would be heard on 23rd January, 2024.

13. In view of the **apparent non-service** of a hearing notice on the Respondent/Applicant regarding the hearing **subsequently** scheduled for **23rd January, 2024**, and having considered the submissions filed, the Notice of Motion dated 8th April, 2025 must succeed, and is hereby allowed in the following terms:-

(a) The order and decree dated 23rd January, 2024, and all consequential orders, are hereby set aside.

(b) The Respondent/Applicant shall file and serve response to the Notice of Motion dated 1st November, 2023 within fourteen (14) days of this Ruling.

(c) The matter will be mentioned in Court on 16th December, 2025 for taking of directions on hearing of the said application.

(d) Each party shall bear its own costs of the application.

14. Orders accordingly.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS
14TH DAY OF NOVEMBER 2025**

AGNES KITIKU NZEI

JUDGE

ORDER

This Ruling has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of the applicable Court fees.

AGNES KITIKU NZEI

JUDGE

Appearance:

Miss Ameba for the Applicant

Miss Achola for the Respondent