



REPUBLIC OF KENYA



KENYA LAW
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**Kenya Engineering Workers Union v M/S Sohan Singh Josh & Sons Ltd
(Cause 262 of 2020) [2025] KEELRC 697 (KLR) (6 March 2025) (Ruling)**

Neutral citation: [2025] KEELRC 697 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 262 OF 2020
CN BAARI, J
MARCH 6, 2025**

BETWEEN
KENYA ENGINEERING WORKERS UNION CLAIMANT
AND
M/S SOHAN SINGH JOSH & SONS LTD RESPONDENT

RULING

1. Before Court is the Respondent's motion dated 27th July, 2022, brought pursuant to Article 50 of the Constitution of Kenya, Sections 1A, 1B, 3A and 63 (e) of the Civil Procedure Act, Cap 21 Laws of Kenya, Order 51 Rule 1 and Order 12 Rule 7 of the Civil Procedure Rules 2010. The Respondent seeks the following orders:-
 - i. Spent
 - ii. That pending the hearing and determination of this Application and Main Suit, the Honourable Court be pleased to stay the execution of the Order given on 5th July 2022.
 - iii. That pending the hearing and determination of this Application and Main Suit, the Honourable Court be pleased to set aside and review the Ruling and Order dated 5th July 2022.
 - iv. That the grounds of opposition dated 5th July 2022 in opposition to the Claimant's/ Respondent's Application dated 25th June 2020 as filed by the Respondent/ Applicant be deemed as duly filed.
 - v. Costs be in the cause.
2. The application is supported by grounds on the face of the motion and the affidavit of Deljinder Singh Mudher sworn on 27th July, 2022. The crux of the motion is that on 5th July 2022, the matter came up without the knowledge of the Respondent/Applicant and a Ruling and Order was issued against the Respondent/Applicant ex parte.



3. The Respondent avers that it was not served with notice of the said hearing date and hence, was not aware that the matter was before court.
4. That the Respondent/Applicant has never been served with any date on the matter despite the Claimant knowing that the Respondent/Applicant was being represented by an advocate whose contacts they had and further that the Claimant had the contacts of Respondent's/Applicant's contact.
5. The Respondent states that their advocate recently received a message from the judiciary, informing him that the matter had been slated for hearing on 17th June 2022. That on 17th June 2022, when the Respondent's/Applicant's advocate checked the day's cause list, there was a notice stating that Hon. Justice James Rika is away on official duty and that parties will be sent emails for dates fixed at the registry.
6. The Respondent states that no email was ever sent to them or their advocate on record from the registry, informing them of the date set for 5th July 2022, as per the notice issued on 17th June 2022, only to receive a message on the afternoon of 5th July, 2022, from the judiciary informing him that the matter had been updated for ruling.
7. The Respondent states that they were shocked to receive the message given that they were never informed of the date. It avers further that during this time it was served with a letter dated 8th July 2022 by the Claimant seeking to execute the Orders given on 5th July 2022.
8. It is the Respondent's position that after being granted leave to respond to the Claimant's application dated 25th June 2020, the Respondent/Applicant instructed their advocates on record to oppose the said application and its advocates drafted grounds of opposition in opposition to the application, but when they tried to file the same through the e-filing portal the case had been unmapped from their advocates portal and it is only recently that the same was mysteriously mapped again to the Respondent's/Applicant's advocate e-filing portal for reasons not known to the Respondent/Applicant.
9. The Respondent states that the Claimant will not suffer any prejudice should this application be granted as the matter will purely be heard on merit. That it is in the interest of justice that the Respondent/Applicant be granted the prayers sought.
10. The Claimant opposed the motion vide a Replying Affidavit dated 4th November, 2023 sworn by Wycliff A. Nyamwata. The Claimant submits that the application has been overtaken by events as the Ministry of Labour & Social Protection has already filed its report as was directed pursuant to the order of 5th July, 2022. The Claimant states that the CPMU report has since been filed and is dated 26th January, 2024.
11. The Claimant states that the Orders issued by the Court cannot result in any financial loss as the audited financial statements that was to be provided was from 1st June 2017 to 30th May 2019, which are done annually in accordance with law.
12. It is the Claimant's assertion that although Counsel now on record for the Respondent alleges not being served, he came on record long after the Ruling had been delivered and Affidavit of Service showing clearly that service was done directly to the Respondent as there was no Advocate on record are attached to the Replying Affidavit.
13. That the Respondent has refused and or declined to cooperate with the CPMU, and more than four (4) years since this suit was filed in Court, it is yet to file any response, hence the Claim remains undefended.



14. The Claimant prays that the Respondent's motion be dismissed with costs.
15. Parties urged the application through written submissions and both parties filed their submission.

Determination

16. The issue for determination is whether the Respondent's motion is merited.
17. The Respondent seeks both a stay of the orders made in this matter on 5th July, 2022, as well as a review and the setting aside of the same orders.
18. The Court's exercise of discretion in staying execution of a decision of the court, is guided by the grounds set out in the case of *Stephen Wanjohi v Central Glass Industries Ltd* Nbi HCCC No. 6726 of 1991 where the Court emphasized that:-

“For the Court to grant stay of execution there must be:

- (a). Sufficient cause.
 - (b). Substantial loss.
 - c. No unreasonable delay and security offered for due performance of the decree.”
19. The Respondent/Applicant has admitted that the application from which the orders sought to be stayed emanated from was actually not opposed, their reason being that their advocate was not mapped. Nothing shows that they sought to be mapped for purposes of this suit as no communication to the court registry has been produced in evidence before this court.
 20. It is also true from the Respondent's own admission, that they sought leave to respond to the motion and that the court granted the leave, but even so, no replying affidavit or even grounds of opposition were filed in the suit. The Respondent simply did not bother to follow up on how the suit was progressing and was only awoken by attempts to execute the subject orders of 5th July, 2022.
 21. It is further clear that after filing the instant motion in July, 2022, the Respondent did not make much effort to fix the same for hearing. The Respondent has severally been marked absent when this matter came up in court, and the mentions in the matter have been with respect to the CPMU report and not the Respondent's instant motion.
 22. Further, and as correctly submitted by the Claimant, the Respondent has to date not filed a response to the main claim herein, which confirms their disinterest in defending this suit.
 23. I further note that the ministry of labour pursuant to the orders of 5th July, 2022 has filed the CPMU report and that the court on the 27th February, 2024 issued directions on filing of submissions in respect to the CPMU report.
 24. In light of the foregoing, I return that no sufficient cause has been demonstrated to support the grant of stay orders as sought. The Respondent has similarly not shown the loss that it stands to suffer should the stay orders not be granted, not to mention that the orders having already been complied with, the orders sought are overtaken by events.
 25. On the issue of review, review of an order or decree is possible where there is discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the knowledge of that person or could not be produced by that person at the time when the order was passed or the



order made; or on account of some mistake or error apparent on the face of the record; or where the judgment or ruling requires clarification; or for any other sufficient reason.

26. The Respondent has not at all justified the reason for which it seeks review of the orders of 5th July, 2022. There is no contention of new evidence, mistake or need for clarification in respect of the orders.

27. In *Shah V. Mbogo & Another* (1967) EA 116, the Court of Appeal of East Africa stated:-

“This discretion (to set aside ex parte proceedings or decision) is intended so to be exercised to avoid injustice or hardship resulting from accident, inadvertence or excusable mistake or error, but is not designed to assist a person who has deliberately sought, whether by evasion or otherwise, to obstruct or delay the course of justice.”

28. The Respondent’s motion in my view, is nothing short of a delaying tactic. It is totally devoid of merit and is for dismissal.

29. I thus proceed to dismiss the motion with costs to the Claimant.

30. Orders accordingly.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS 6TH DAY OF MARCH, 2025.

C. N. BAARI

JUDGE

Appearance:

Mr. Makale present for the Claimants/Respondent

Mr. Okelloh h/b for Mr. Midwa for the Respondent/Applicant

Ms. Esther S – C/A

