

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET

CAUSE NO. E021 OF 2021

POTTERS HOUSE ACACEMY.....CLAIMANT

VERSUS

LEAH CHEMELI KEMER.....RESPONDENT

RULING

1. The applicant in the motion dated 22nd November, 2021 seeks orders among others that pending the hearing and determination of the appeal there be a stay of execution of the ex-parte judgment dated 6th October, 2020 in ELRC No.182 of 2019.
2. The trial Court dismissed an application seeking to set aside the ex-parte hearing and judgment. This is the subject matter of the present appeal.
3. The applicant has alleged that it has a good defence to the claim including an averment that the claimant resigned from employment hence was never unlawfully terminated.
4. The Court should always lean towards letting parties ventilate their disputes. When a Court finally renders its determination over any dispute submitted to it to resolve, either party ought to feel they had their day in Court even if the decision might not favour them. An ex parte hearing therefore deprives a party of this right and should only be conducted in exceptional cases where it is plain and clear that the defendant was properly served but failed and or ignored to attend Court. In an application to set aside an ex parte hearing the Court ought to listen to what explanation or excuse the applicant has that prevented them from attending Court. If found reasonable, the application ought to be allowed.
5. The function of this Courts as the 1st appellate Court is that it will look a fresh at the evidence and arrive at its own conclusion.
6. The applicant intends that the Court considers the application seeking to set aside the ex parte hearing and judgment.
7. If the Court were to come to conclusion that the application to set aside the ex parte hearing should be allowed, it would be purely academic if execution had been allowed to proceed.
8. In the circumstances the Court will allow the application and grant the appellant stay of execution of judgment delivered on 6th October, 2020 pending hearing and determination of the present Appeal.
9. Parties are however urged to fast track the hearing and disposal of the Appeal.
10. **It is so ordered.**

DATED AND DELIVERED AT ELDORET THIS 30TH DAY OF MARCH, 2022

Abuodha Nelson Jorum

Judge ELRC