

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT ELDORET

MISCELLANEOUS APPLICATION NO. E007 OF 2021

JOSEPH KINYANJUI KIGURE.....APPLICANT

VERSUS

RAI PLY WOODS (K) LTD.....RESPONDENT

RULING

1. By motion dated 6th May, 2021, the applicant sought orders among others that the award of the Director OSH made on 5th August, 2016 be deemed legitimate and the court do order settlement of the same or give any other direction leading to settlement of the award failure of which execution to issue.
2. The affidavit of service filed on 30th June 2021 sworn by one Lornah Kangu shows the respondent was served on 11th June, 2021. The attached page to the affidavit of service showed it was stamped as received by the respondent on 11th June, 2021 and further that it bore the date 15th July, 2021 as the date for hearing the motion.
3. When the matter came before me on 15th July, 2021 as scheduled, the respondent had neither entered appearance to the application nor filed a response thereto. The Court being persuaded that there was proper service, proceed to grant the application as prayed.
4. The application by the respondent dated 23rd July, 2021 seeks the setting aside of the orders of the Court granted on 15th July, 2021 on the grounds that the application dated 6th May, 2021 was served upon it without a date for hearing.
5. The respondent further had earlier on 19th July, 2021 filed a Replying Affidavit by one Joachim Kimoja in which he deponed among others that the present application was similar to one filed before the Chief Magistrates Court as Misc. Civil Application No. 44 of 2020 which application was heard and determined. The ruling of the lower Court was attached to the affidavit.
6. The Court has perused the said ruling and it is indeed true that the issue before me canvassed through application dated 6th May, 2021 were the same issues before the Lower Court and in respect of which a Ruling was delivered on 19th January, 2021 by Honourable Naomi Wairimu in which she dismissed the application as statute barred.
7. The Court therefore agrees with the respondent that it was material non- disclosure on the part of the applicant in application dated 6th May, 2021 not to disclose that a similar application had been entertained by the subordinate Court and dismissed.
8. If the applicant therein was not satisfied with the determination of the Lower Court the best recourse would have been to appeal to this Court.
9. In conclusion the Court will not only allow the application dated 19th July, 2021 but proceed to exercise its summary jurisdiction and strike out the entire suit as being res judicata.
10. **It is so ordered.**

Dated and delivered at Eldoret this 18th day of March, 2022

Abuodha Nelson Jorum

Judge ELRC