



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT & LABOUR RELATIONS COURT OF KENYA**

**AT NYERI**

**CAUSE NO.18 OF 2015**

***(Before D.K.N.Marete)***

**FRANCIS KARONGO WAGANA.....CLAIMANT**

**VERSUS**

**NATIONAL UNION OF WATER & SEWERAGE EMPLOYEES..... RESPONDENT**

**R U L I N G**

This is an application dated 23rd December, 2020 and comes out thus;

1. *THAT service of this Application be dispensed with and the same be heard exparte in the first instance.*
2. *THAT the Honourable Court be pleased to grant leave for this application be heard during this Court's Vacation.*
3. *THAT pending the hearing and determination of this application, the Honourable Court be pleased to issue and Order for stay of execution of the exparte judgment and decree herein dated 9th April 2019.*
4. *THAT the Honourable Court be pleased to set aside the exparte judgment and decree dated 9th April 2019 and all the consequential proceedings.*
5. *THAT the draft Memorandum of Response annexed to the Supporting Affidavit be deemed as duly filed subject to payment of the requisite court fees.*
6. *THAT the costs of the Application be borne by the Claimant.*

It is grounded on the fact that this matter was determined without the participation of the applicant. He was disabled as a result of the constant wrangles in the union which distracted his involvement, despite several attempts.

The Claimant/Respondent in her Replying Affidavit sworn on 19th January, 2021 oppose the application and avers as follows;

8. *THAT indeed it is true that Respondent Agent appeared in Court on the date for hearing and his application to file a Response out of time was rightly rejected as there was already a Response in the court file which counsel on record for respondents ought to and must have known as he had as indicated taken over the matter from the previous Advocates through a Notice of change of advocates.*
9. *THAT the applicant cannot claim to have been condemned unheard as he had his defence on record had been served with a hearing notice, attended court during the hearing but walked out when his misplaced application to file a response out of time was rightly rejected.*
12. *THAT it is noteworthy that the Advocates on record for the Respondent despite claiming that there was no pre-trial even filed a list of documents on 21st October, 2015.*
13. *THAT for the Respondent to claim to have another defence/Response to claim 1 year 9 months since the judgment was entered is defeatist in nature as this should have been raised in the Defence that was filed on behalf of the Respondents initially by the firm of Gichuhi Mwangi and Co.Advocates and/or if not then when the current advocate on record for the Respondents*

*filed a Notice of Change on 19th June 2015 almost 5 years ago.*

*14. THAT the Respondent by filing this application is only keen on keeping me from the fruits of a judgment which judgment that they are seeking to set aside they have all through had knowledge of at least since date of judgment as evidenced in their letter to court dated 9th April 2019 seeking copies of judgment. Annexed hereto and marked FKW 3 is a copy of the letter requesting copy of judgment.*

This application must fail. This is because the Applicant does not come out clean in support of the application for stay of execution of ex-parte judgment and decree dated 9th April, 2019.

The Applicant failed to sustain his case due to his imminent inertia on his part. He was not diligent in litigation of his case despite ample opportunity and facility so to do.

I am therefore inclined to dismiss the application with costs to the Respondent.

**Dated and delivered at Nyeri this 9th day of March, 2022.**

**D.K.Njagi Marete**

**JUDGE**

Appearances

1. Mr. Muhoho instructed by Muhoho Gichimu & Company Advocates for the Claimant/Applicant.
2. Mr. Mageto instructed by M'Njau & Mageto Advocates for the Respondents.