



REPUBLIC OF KENYA



KENYA LAW
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Makokha v China Road & Bridge Corporation (K) & another (Cause E645 of 2020) [2022] KEELRC 13463 (KLR) (8 December 2022) (Ruling)

Neutral citation: [2022] KEELRC 13463 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E645 OF 2020
L NDOLO, J
DECEMBER 8, 2022

BETWEEN

ZAKAR NAMATSI MAKOKHA CLAIMANT

AND

CHINA ROAD & BRIDGE CORPORATION (K) 1ST RESPONDENT

CHINA COMMUNICATION CONSTRUCTION COMPANY 2ND RESPONDENT

RULING

1. On July 28, 2022, I entered an *ex parte* judgment in favour of the claimant as against the 2nd respondent, in the sum of Kshs 210,800 plus costs and interest.
2. Pursuant to execution initiated by the claimant, the respondents moved the court by way of notice of motion under certificate of urgency dated October 5, 2022 seeking stay of execution and setting aside of the judgment.
3. The respondents further sought unconditional leave to file a response to the claim.
4. The motion is supported by an affidavit sworn by the respondents' liaison officer, Paul Mutua and is based on the grounds that:
 - a) The 1st respondent's property was proclaimed on September 29, 2022, in execution of the decree of the court issued on July 28, 2022;
 - b) The proclamation notice gave a 7 days' notice which was set to lapse on October 5, 2022;
 - c) The respondents were not served with summons in the matter and were utterly shocked that judgment had been entered against them without service;



- d) The respondents were never served with the notice of entry of judgment as is required under the law in case of a default judgment;
 - e) The respondents settled the claim herein at the demand stage and are utterly shocked that the claimant instituted a suit against them despite a settlement agreement being reached and the claimant being fully compensated;
 - f) The judgment was therefore obtained irregularly and through misrepresentation of facts to the court;
 - g) Unless the court urgently intervenes, the respondents' goods shall be carted away and sold by way of public auction on account of an irregular default judgment;
 - h) The respondents are desirous of defending the claim herein and have a response that raises triable issues;
 - i) It is in the interest of justice that the orders sought are granted.
5. The claimant did not respond to the motion in spite of adequate opportunity to do so.
 6. The respondents state that they were not served with the suit papers and add that the claim was settled at the demand stage. The claimant did not deny these averments.
 7. In the circumstances, I am persuaded that this is a proper case for setting aside of the *ex parte* judgment.
 8. The judgment delivered on July 28, 2022 together with the consequent decree are therefore set aside and the respondents are granted leave to defend the claim. The respondents are directed to file and serve their response to the claim within the next twenty-one (21) days from the date of this ruling.
 9. The costs of the motion will be in the cause.
 10. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 8TH DAY OF DECEMBER 2022

LINNET NDOLO

JUDGE

Appearance:

No appearance for the Claimant

Ms. Kihenjo for the Respondents

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