



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

CAUSE NO. 350 OF 2015

WILLIAM OUMA OSUR.....CLAIMANT

v

SAALMAN IRANI.....RESPONDENT

RULING

1. The Court delivered a judgment in favour of the Claimant on 16 April 2020. The Respondent did not attend the hearing on 8 October 2019.
2. On 24 April 2020, the Respondent filed a Motion seeking orders:
 - (i) ...
 - (ii)
 - (iii) THAT upon the grant of prayers nos 1 and 2 above, the Honourable Court be pleased to issue an order of review and an order setting aside the judgment dated 16/04/2020 and have the same varied in its entirety pending the final hearing and determination of the present application.
 - (iv) THAT the Court be pleased to grant an order recalling the Claimant specifically and precisely for cross-examination and equally permit and let the Respondent and his witnesses (if any) tender their evidence prior to closure of the Cause.
 - (v) THAT costs of this application be provided for.
3. On the same day, the Court gave directions on the filing and exchange of responses and submissions with Ruling to be delivered on notice.
4. As a result, the Claimant filed his Grounds of Opposition and submissions on 14 May 2020 while the Respondent filed his submissions on 17 June 2020.
5. When the Motion came up today, the parties informed the Court of the directions which had been given.
6. The Judge who gave the directions was transferred from the station in November 2020. It is not clear from the record why the Deputy Registrar never transmitted the file to him to prepare a Ruling.
7. Since the Judge is no longer in the station, and in order to save costs and time, this Court has opted to prepare and deliver the Ruling on the Motion.
8. The primary ground advanced in support of the Motion was that the Respondent could not attend the hearing on 8 October 2019 due to reasons beyond his control in that the advocate who held brief for the advocate on record did not notify the instructing advocate of the hearing date.
9. The Respondent also challenged the merits of the judgment on the basis that some of the evidence produced by the Claimant and relied on by the Court was misleading.
10. The Claimant on the other hand contended that the Motion was without merit, frivolous and vexatious because when the hearing date of 8 October 2019 was being fixed on 25 February 2019, the Respondent was represented by Ms Bagwasi, advocate while the Claimant was absent.

11. The Court has looked at the record. When the Cause was mentioned on 25 February 2019, the Respondent was represented while the Claimant was absent.
12. The Court scheduled the hearing for 8 October 2019 and Ms Bagwasi was directed to inform the Claimant of the hearing date.
13. On 8 October 2019, the Respondent and his advocate did not attend Court and the Court took the Claimant's evidence.
14. The Respondent's advocate on record did not swear any affidavit to disclose under what circumstances Ms Bagwasi held his brief or how the instructions were conveyed to her.
15. It therefore cannot be that the Respondent and counsel were not aware of the hearing date.
16. The Respondent was seeking an exercise of the Court's discretion.
17. In consideration of the evidence on record that the hearing date was scheduled in the presence of the Respondent's advocate, and the advocate on record and the advocate who held brief have not sworn affidavits, the Court declines to allow the Motion.
18. Just for clarity, it is not within the province of this Court to relook at the evidence which was presented before the trial Judge and or examine his conclusions of fact.
19. The Motion dated 24 April 2020 is dismissed with costs.

DELIVERED THROUGH MICROSOFT TEAMS, DATED AND SIGNED IN KISUMU ON THIS 29TH DAY OF JUNE 2021.

RADIDO STEPHEN, MCIARB

JUDGE

Appearances

For Claimant Ouma Anyumba & Co. Advocates

For Respondent Pascal & Associates Advocates

Court Assistant Chrispo Aura