

REPUBLIC OF KENYA

LABOUR RELATIONS COURT AT NAIROBI

CAUSE NUMBER 2243 OF 2017

BETWEEN

NELSON OMILA SAUNYACLAIMANT

VERSUS

IDEAL SECURITY SERVICES LIMITED.....RESPONDENT

RULING

1. Judgment was entered in favour of the Claimant on 9th April 2021.
2. This followed an *ex parte* hearing on 21st January 2021.
3. The record indicates that Summons issued against the Respondent in 2017. There was no Appearance entered within the prescribed time. Pre-trial conferencing took place on 16th July 2019, when the Respondent's Counsel asked for time to file Response. The Court granted the Respondent 7 days to comply. There was no compliance. The matter was mentioned on 3rd December 2019 before the Hon. Principal Judge Maureen Onyango. Both Parties were represented. The Respondent still had not complied. The Principal Judge certified the case ready for hearing undefended. The Respondent did not apply to have the orders made by the Principal Judge set aside. On 6th November 2020, the Court Deputy Registrar fixed the matter for formal proof.
4. The Respondent has against this background, filed an Application dated 21st April 2021, asking the Court to set aside *ex parte* Judgment, and reopen the hearing. The Application is supported by an Affidavit sworn by Respondent's Counsel, Benard Obae, on 21st April 2021. The Respondent alleges that the Court File was missing and Pleadings could not be filed within the given time. It also alleges, that it was hampered by Covid-19, which has stifled the operations of the Court. It is submitted that there are triable issues warranting grant of the orders sought.
5. Parties agreed before the Deputy Registrar on 11th May 2021, to have the Application considered and determined on the strength of Written Submissions. They confirmed filing and exchange of Submissions at the last virtual mention, on 11th June 2021. Ruling was reserved for 23rd September 2021. It has however been readied well in advance of this date, and the Court has no reason to keep it pending. It has directed that the Registry issues notices to the Parties, for delivery on the date indicated below.
6. The Court does not think, based on the record as summarized above, that there is good ground shown by the Respondent, to interfere with the Judgment on record. Parties were represented in Court when various procedural orders issued. The Respondent did not comply with those orders. Covid-19 should not be blamed for every failure by some litigants, occurring in the corridors of justice. There is no evidence that the file was at any one time, irretraceable. The Deputy Registrar would have been engaged by the Respondent, if the file was missing. The Court is satisfied that the Respondent was granted sufficient time to participate in the proceedings, but completely rejected that opportunity.

IT IS ORDERED: -

a. The Application filed by the Respondent, dated 21st April 2021 is declined.

b. Costs to the Claimant.

Dated, signed and released to the Parties electronically, at Chaka, Nyeri County, under Ministry of Health and Judiciary Covid-19 Guidelines, this 20th August 2021.

James Rika

Judge