



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT UASIN GISHU

COURT NAME: ELDORET LAW COURT

CASE NUMBER: ELRC.C/260/2017

CITATION: RAHAB WAMBUI NGANGA VS RURAL DEVELOPMENT SOLUTION LIMITED

RULING

ON 2021-10-01 BEFORE HON. JUSTICE J. N. ABUODHA

1. By a Notice of Motion dated 26th May, 2021 the respondent /Applicant sought orders among others that:-

- (i) THAT there be stay of execution of the judgement entered herein and any or all consequential orders including judgement and grant the respondent /applicant opportunity to cross-examine the Claimant /respondent and also present its evidence in response to the Claimant's claim pending the hearing and determination of this application.
- (ii) THAT this Honourable Court be pleased to set aside proceedings/directions and any or all consequential orders emanating therefrom pending the hearing and determination of this application.
- (iii) THAT once the judgement is set aside the Claimant/respondent herein be and is hereby recalled for cross-examination before to adoption or evidence and or before delivery of judgement on merit.
- (iv) THAT the respondent /applicant be heard on the witness statement and response to the claim herein and be allowed to canvass response to claim on merit.
- (v) THAT the judgement entered herein on the 19th May 2021 and the ensuing decree be put on hold set aside and or execution thereof halted and the case ordered to be heard afresh by according the Respondent /applicant opportunity to be heard through the representation of Mose Nyambega & Company Advocates in place of Kirwa & Company Advocates.

2. The application was further supported by the affidavit of one Svene Rene who deponed inter alia.

- (i) THAT I was a Director of the Applicant herein duly authorized and competent to make and swear this affidavit.
- (ii) THAT at inception when the Claimant /respondent filed suit against the respondent the respondent appointed the firm of Kirwa & Company Advocates to represent it in Court/in defense of the substantive suit.
- (iii) THAT the said firm of advocates applied to cease acting without prior or any communication to the applicant or the Applicant's Director or officials.
- (iv) THAT on or about 19th May 2021 the Respondent /applicant was served with judgment of court dated 19th May 2021 entered herein against the respondent /applicant.
- (v) THAT the respondent /applicant sued herein was dissolved vide gazette notice dated 12th July 2019 and therefore has no shareholders or assets.
- (vi) THAT the respondent /applicant has since learned from the judgement served that the advocate previously on record filed application to cease acting dated 8th November 2019 without notification to the Applicant or instructing client.
- (vii) THAT the said advocate did not serve the respondent/applicant herein with the application nor were they informed of the intention to cease acting.

(viii) THAT the advocates previously on record did not attend the hearing and or judgement of this suit.

(ix) THAT it is through the judgement served to the respondent /applicant vide email that they came to learn of the existence of this suit.

(x) THAT I am advised by the Respondent/applicant's advocates on record that the process judgement herein did not incorporate the knowledge and participation of the respondent and nor their previous Counsel's on record.

3. The Claimant opposed the application and filed a Replying Affidavit in which she stated among others that: -

(i) THAT I am a female adult and the Claimant/Respondent herein hence competent and well placed to swear this affidavit as hereunder expressed.

(ii) THAT I can declare and state on Oath that the Respondent/Applicant's application has not been brought to court in good faith but rather with a half-truth, full of malice, with immaterial facts and without any basis whatsoever.

(iii) THAT the application to cease acting by Mwakio Kirwa & Co., Advocates was served upon the Respondent /Applicant and it was only after proof of service of the said application upon the Respondent /Applicant that the same was allowed.

(iv) THAT the Respondent/Applicant cannot hide behind the alleged failure on the part of the former Advocates as it has not demonstrated that it took any steps to find out the progress of the case since 2019 when the former Advocates ceased acting.

(v) THAT my Advocates on record served the Respondent/Applicant every time this matter came up in court and there were even conversations between the Respondent/Applicant and my Advocates.

(vi) THAT when this matter was fixed for hearing on 16th March 2021 the Respondent/Applicant was served with a Hearing Notice on 19th January, 2021 and it acknowledged the same.

4. The parties in this matter had previously and pursuant to directions given by Marete J, filed written submissions in the matter and were awaiting judgement. However, when I took over as the new ELRC Judge in Eldoret, I directed that all matters previously directed to proceed by way of written submissions be recalled afresh and hearing proceeds through viva voce evidence.

5. This matter was consequently set for hearing on 12th November, 2019. On this day Mr. Kirwa for the respondent informed the Court that he was unable to proceed because he had lost contact with his client and sought leave to make an application to cease acting for the respondent.

6. The leave was granted and Counsel filed the application dated 8th November, 2019 which was granted as prayed when the Court was satisfied that the same had been served on the client through their last known address as directed by the Court.

7. The matter subsequently came up for hearing on 26th February, 2020 but did not proceed because the Claimant Counsel informed the Court that he had not been able to serve the respondents.

8. On 23rd September, 2020 matter came up once again for mention and the Court certified the same ready for hearing on a date to be taken at the Registry. The same was thus fixed for hearing on 16th March, 2021 and proceeded as scheduled but ex parte after the Court became satisfied that the respondent was served by Registered Post through their last known address.

9. The previous Counsel on record Mr. Kirwa served the respondent with his application to cease acting through postal address "P.O Box 2000 village Market, Nairobi".

10. The respondent has not denied this is its last known address hence it is unbelievable that it was not aware that their advocate had withdrawn from acting. Besides Counsel for the Claimant served one Julius Kitur who is described as the Director of the respondent through what's App number 0721441138.

11. Mr. Kirwa withdrew from acting on 27th November, 2019 and the matter came up for hearing on 16th March, 2021 some one year three months later. It is therefore incredible that the respondent for all this time never followed up on their case.

12. It is not enough for a party to blame an advocate for not updating them on the progress of their case. It is ones responsibility as a party to a suit to follow the same up with their advocates as well.

13. The respondent in this particular case cannot fault Counsel after not keeping in regular contact with Counsel forcing the latter to withdraw from the case citing inability to be in communication with his client.

14. The Court holds the view that the application herein is inordinately late and is not brought in good faith.

15. The same is therefore dismissed with costs.

16. It is so ordered.

GIVEN UNDER MY HAND AND SEAL OF THIS COURT ON 2021-12-01 11:26:43

SIGNED BY: HON. JUSTICE J. N. ABUODHA (ADMINISTER JUSTICE)

THE JUDICIARY OF KENYA.

ELDORET ELRC

EMPLOYMENT AND LABOUR RELATIONS COURT

DATE: 2021-12-01 11:26:43