



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT BUNGOMA

CAUSE NO. 53 OF 2018

VERONICA OMINA MUSIKALI.....CLAIMANT/RESPONDENT

VERSUS

DIRECTOR YAJOKA RESTAURANT GARDEN.....RESPONDENT/APPLICANT

RULING

1. Application dated 10th June 2019 by Swan Advocates prays inter alia for:

(a) Leave for the firm of Swan Advocates to act in place of Bake, Hassan, Hisham and Associates Advocates.

(b) stay of execution of the judgment of the court dated 30th November 2019.

(c) Review and setting aside of the ex parte hearing of 25th March 2019 and judgment dated 30th May 2019 and matter be heard afresh.

2. Application is based on grounds set out on the notice of motion and supporting affidavit of Daniel Hadgu a director of the applicant to wit that the applicant filed a defence and counter claim to the suit on 14th January 2019 and served the same upon the claimant/respondent.

3. That Bake, Hassan, Hisham and Associates Advocates were on record representing the Applicant.

4. That the Advocates were never served with a hearing notice nor informed of the hearing of the suit on 25th March 2019.

5. That ex parte judgment was entered on 30th May 2019 in favour of the claimant which is about to be executed.

6. That the applicant was ready to defend the suit and prosecute the counter claim.

7. That it is unjust to condemn the Applicant unheard and is a violation of the constitution.

Replying Affidavit

8. The claimant in reply to the application deposes that she was not served with the notice of appointment of advocates and or Appearance. That she was not served with a memorandum of defence. That the claimant served the respondent directly on 25th February 2019 at 2.30 pm with the hearing notice of 25th March 2019. That the applicant willfully failed to attend the hearing of the suit and only wishes to delay justice.

Determination

9. The court is satisfied that Bake Hassan, Hisham and Associates Advocates filed notice of appointment for the respondents dated 9th January 2019 and also filed a statement of defence and counterclaim on 14th June 2019.

10. The said firm of Advocates however did not serve the claimant/respondent with the notice of appointment and the defence. The claimant therefore continued to serve the respondent directly with the hearing notice of 25th March 2019, which fact the respondent does not deny. The respondent and its Advocates did not attend the hearing of the suit as scheduled on 25th March 2019.

11. Failure by the director of the respondent to attend court is not explained at all. This failure cannot be attributed to the Advocate for the respondent.

12. The overriding objective of the court is to hear and determine suits before it expeditiously. Failure to attend court by a party must be fully explained to justify setting aside of a judgment. The court is not satisfied that the respondent nor its advocates have justified their failure to attend court to defend this suit nor serve the claimant with the statement of defence.

13. The application lacks merit and is dismissed with costs.

Ruling Dated, Signed and delivered this 29TH day of January , 2020

Mathews N. Nduma

Judge

Appearances

Mr. Nyangayu for Respondent/Applicant.

Claimant in person.

Chrispo – Court Assistant