



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT KISUMU

CAUSE NO. 39 OF 2013

(Before Hon. Justice Mathews N. Nduma)

JARED OMONDI OBER.....1ST CLAIMANT

JOHN OLUOCH ORINDA.....2ND CLAIMANT

VERSUS

COUNTY GOVERNMENT OF HOMA BAY.....RESPONDENT

RULING

1. By notice of motion dated 5th November 2019, and filed on 11th November 2019, the respondent/Applicant prays for the following reliefs:
 - i. That pending the hearing and determination of this motion inter partes the firm of Orego and Odhiambo Advocates be granted leave to come on record for the Respondent in the place of Nyauke and Company Advocates.
 - ii. That upon the hearing and determination of this motion inter partes, this Honourable court do hereby grant an order of stay of execution of its judgment and Decree dated 4th October 2018 together with all consequential orders.
 - iii. That this Honourable court do hereby set aside its judgment and decree dated 4th October 2018.
2. The application is supported on grounds set out on the face of the Notice of Motion that the court granted judgment in favour of the claimants against the respondent on 4th October 2018 pursuant to a hearing that took place on 18th March 2018.
3. That the claimants have instituted execution proceeding against the respondent. That failure to attend the hearing was occasioned by the conduct of the Advocates then on record.
4. That the delay in bringing this application was occasioned by the said Advocates, then on record.
5. That the respondent has good defence. That mistake of counsel should not be visited on the client.
6. That no prejudice that cannot be mitigated by costs shall be occasioned on the claimants.
7. The claimants filed a reply to the application on 15th January 2020 stating that since the judgment was entered on 4th October 2018, the claimants served the Principal Legal Counsel for the respondent with the court order and an application for contempt of court on 30th April 2019.
8. That this application has been brought many months after by an applicant who is in contempt of court orders.
9. That the claimants deserve the fruits of their judgment and stay orders will prejudice them and occasion them irreparable loss.
10. That the Principal Legal Officer was aware at all times of the court proceedings and the application lacks merit and it be dismissed.

Determination

11. Judgment was entered against the respondent on 4th October 2018. The claimants have attempted to execute the judgment against the respondent since 30th April 2019.

12. The respondent filed the application on 11th November 2019 more than a year from the date of judgment and more than five (5) months from the date the principal counsel of the respondent was served with application for contempt of court.

13. The application has been brought after inordinate delay. The court is satisfied that the respondents were at all material times aware of the suit but failed to defend the same and ex parte judgment was duly entered.

14. The court is not satisfied with the excuse advanced by the respondent for their failure to defend the suit. The claimants shall suffer prejudice and loss occasioned by prolonged delay in bringing the application. See **Signature Tours and Travel Limited vs National Bank of Kenya Limited and another. Case no. 61 of 2018 and James Kanyiita Nderitu and another (2016) eKLR.**

15. The court directed the respondents to re-engage the claimants, but they have declined to comply with the court order before coming to court. The applicants do not have clean hands and do not deserve exercise of discretion of this court in their favour. The respondents have also not complied with the order to pay the claimants arrear salary for the period the claimants were placed under suspension. The respondents have not demonstrated that they have a viable defence against the suit.

16. The court finds that the application lacks merit and the same is dismissed with costs.

17. The respondent is directed to comply with the judgment of the court delivered on 4th October 2018 forthwith failing which claimant/applicant to execute the judgment.

Ruling Dated, Signed and delivered at Nairobi this 30th day of April, 2020

Mathews N. Nduma

Judge

ORDER

In view of the declaration of measures restricting court of operations due the COVID-19 pandemic and in light of the directions issued by his Lordship, the Chief Justice on 15th March 2020, this ruling has been delivered to the parties online with their consent. They have waived compliance with **Order 21 rule 1 of the Civil Procedure Rules** which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court has been guided by **Article 159(2)(d)** of the Constitution which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under **Article 48** of the Constitution and the provisions of **Section 18 of the Civil Procedure Act (chapter 21 of the Laws of Kenya)** which impose on this court the duty of the court, *inter alia*, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

Mathews N. Nduma

Judge

Appearances

Claimant's in person

Orego for the respondents

Chrispo – Court Clerk