



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR
RELATIONS COURT AT MOMBASA
APPEAL NUMBER 23 OF 2019

BETWEEN

MOHAMED RAFIKI BASHIR.....APPELLANT

VERSUS

CHIVUNDE NDEGWARESPONDENT

RULING

1. In Chief Magistrate's Court, E&LR Cause Number 375 of 2018 between the Parties herein, default Judgment was obtained by the Respondent. The Appellant subsequently applied to set aside default Judgment. The application was dismissed in a Ruling delivered on 15th October 2019.
2. The Respondent filed an Appeal against that Ruling, on 18th November 2019. Also filed on the same date is an Application seeking an order that: ***“the Honourable Court do grant a stay of execution of proceedings in Chief Magistrate's Employment and Labour Relations Court Claim No. 375 of 2018, Chivunde Ndegwa v. Mohammed Rafik Bashir, pending hearing and determination of the Appeal herein.”***
3. Also pending is an Application filed by the Respondent on 3rd December 2019, seeking an order that: ***“the Honourable Court do deem the Appeal herein to have been filed within time.”***
4. Both Applications are founded on Supporting Affidavits of the Appellant Mohamed Rafiki Bashir, sworn on 15th November 2019 and 29th November 2019.
5. The Respondent opposes the main Application filed on 18th November 2019, through his Replying Affidavit, sworn on 3rd December 2019.
6. Parties agreed that the Application filed on 18th November 2019, is considered and determined on the basis of Written Submissions. Submissions are confirmed to have been filed, and the physical file has been placed before the undersigned Judge, through courier services under the Covid-19 Judiciary Guidelines, for preparation of the Ruling.

The Court Finds:-

7. The Appellant appears to have absented himself from the trial, and can only blame himself, for the situation he finds himself encountered with.
8. He does not seem to have a reasonable explanation on his failure to participate in the proceedings that led to default Judgment.
9. The Ruling of the trial Court, disallowing his endeavor to set aside Judgment, cannot be faulted. There are no grounds to warrant orders of stay of execution sought. The detailed Replying Affidavit of the Respondent, persuades this Court, that the Application filed on 18th November 2019, is meant to obfuscate the Respondent's right to an expeditious and just conclusion to his Claim.
10. Let the Respondent pursue his Appeal whatever it is worth, without frustrating the process of execution. If he is successful in that Appeal, he has not demonstrated that the Respondent will not be able to refund whatever money the Respondent will have received by way of executing the decree.

IT IS ORDERED:-

- a. The Application dated 15th November 2019, filed by the Appellant on 18th November 2019, is rejected.*
- b. The Appellant is at liberty to prosecute his pending Application and if the Application is permitted, to prosecute his Appeal.*
- c. No order on the costs.*

Dated, signed and released to the Parties at Chaka, Nyeri County, under Judiciary Covid-19 Guidelines and Rule 38 of the E&LRC [Procedure] Rules, 2016, this 29th day of June 2020

James Rika

Judge