



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAIROBI

CAUSE NO. 792 OF 2015

JOHN KIMANZI.....CLAIMANT

VERSUS

PRIME STEEL MILLS LTD.....RESPONDENT

RULING

1. On 20 April 2018, the Court delivered judgment in favour of the Claimant and awarded him Kshs 352,425/- as pay in lieu of notice, service pay and compensation.
2. The Cause had proceeded as an undefended Cause/formal proof because the Respondent did not enter appearance/file a Response.
3. When the Claimant moved to execute, the Respondent moved the Court on 16 January 2019 seeking orders
 1. ...
 2. THAT this Honourable Court be pleased to stay execution of the judgment and decree of the Honourable Justice Radido Stephen in ELRC No. 792 of 2015 at Nairobi pending hearing and determination of this application *inter partes*.
 3. THAT the judgment of this Honourable Court delivered in ELRC No. 792 of 2015 at Nairobi and all consequential Decree and proceedings be and are hereby set aside.
 4. THAT the Respondent/Applicant be granted leave to file a Response in this matter.
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4. When the application was placed before the Duty Court on 17 January 2019, it allowed temporary stay of execution pending *inter partes* hearing.
5. Although the Claimant was served with the application on 21 January 2019, he had not filed a response by the morning of the *inter partes* hearing. The Court allowed him to make oral submissions.
6. The principal ground advanced by the Respondent in support of the application was that it was not served with *Notice of Summons* and the pleadings and it only became aware of the proceedings when auctioneers moved in to execute.
7. According to the Respondent, the failure to serve *Notice of Summons* meant that it had been denied an opportunity to be heard and therefore it stood to suffer irreparable harm if the orders sought were not granted.
8. The Claimant, in opposing the application contended that there had been material non-disclosure on the part of the Respondent as it had participated in the taxation of the bill of costs, a process before execution.
9. The Claimant also asserted that the Respondent had not demonstrated that there were any triable issues warranting granting of leave to defend.
10. An affidavit of service sworn by a process server Geoffrey Anami and filed in Court on 16 June 2016 deposed that an employee named as Okoth Stanley and stated as Human Resources Manager of the Respondent was served and acknowledged service of *Notice of Summons*

on 27 May 2015.

11. The Respondent did not/has not denied that it had an employee by the name of Okoth Stanley. It has also not denied that the said Okoth held the position of Human Resources Manager.

12. The Respondent has also not denied that the said Okoth was served as attested to in the affidavit of service.

13. In the view of the Court, and the Court so finds, the Respondent was served with *Notice of Summons* through its Human Resources Manager Okoth Stanley, but it squandered the opportunity to defend the Cause.

14. The Court also finds that the Respondent failed to demonstrate that it had a defence worth putting to a trial as it did not set out any triable issues in the supporting affidavit of *Ravi Gada*, or file a draft Response.

15. The Court also notes from the record that the Respondent was served with mention notice on 14 September 2015 and that it attended before the Taxing Officer on 4 October 2018, way before the execution commenced but it decided to bring the instant application only on 16 January 2019, over 2 months after becoming aware of the proceedings. The delay was not explained.

16. The application dated 16 January 2019 lacks merit. It is dismissed with costs to the Claimant.

Delivered, dated and signed in Nairobi on this 21st day of February 2019.

Radido Stephen

Judge

Appearances

For Claimant Mr. Mulaku instructed by Namada & Co. Advocates

For Respondent Mr. Mutoro instructed by F.N. & Brian Advocates

Court Assistant Lindsey