



REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 67 OF 2014

ROSANAEL KARIUE ODERO CLAIMANT

V

KENTMERE (1986) LIMITED RESPONDENT

RULING

1. The Cause herein proceeded as undefended Cause because the Respondent did not enter Appearance and/or file a *Response* and in a judgment delivered on 9 November 2018, the Court found and held that the termination of the Claimant's employment was unfair.
2. On 18 December 2018, the Respondent filed a motion under certificate of urgency seeking orders
  1. ...
  2. **THAT** the Honourable Court be pleased to grant stay of judgment delivered on 9<sup>th</sup> November 2018 and all consequential orders thereof pending hearing and determination of this application.
  3. **THAT** the Honourable Court be pleased to set aside the judgment delivered on 9<sup>th</sup> November 2018.
3. The Court allowed order (2) on 20 December 2018 on condition that the Respondent deposit the decretal sum into Court before 7 January 2019 (the condition was complied with).
4. The Claimant filed grounds of opposition and a replying affidavit in opposition to the application on 23 January 2019 and the Court took arguments on 25 February 2019 (the Respondent did not file a further affidavit despite leave being granted).
5. The primary order warranting the Court's examination is the setting aside of the judgment (proposed order 3) and the principal ground advanced in support thereof was that *Notice of Summons* and the Memorandum of Claim were not served upon the Respondent.
6. It was also asserted that the affidavit of service attesting to service of the Summons upon one Paul Migithi was false as he had ceased being an employee of the Respondent by the alleged date of service.
7. Further, the Respondent contended that it had a defence raising triable issues.
8. In opposing the application, the Claimant asserted that service of *Summons* was effected, and further that hearing notice(s) were served through post as contemplated by the Rules of this Court.
9. The parties also drew the attention of the Court to case law.
10. The Respondent did not disclose the exact date on which the aforesaid Manager, Paul Migithi left employment.
11. There was also no reference to the deposition by the process server that he was directed to the said Manager by a Receptionist called Caroline.
12. The Respondent did not deny that it had a Receptionist called Caroline at the time that service was said to have been effected. Whether the said Receptionist had also left or was still in employment was also not disclosed. Her affidavit would have been helpful.

13. On service through post, the Court notes that a copy of the Manager's (Paul Migithi) name/call card was exhibited to the affidavit of service and it gave the Respondent's postal address as P.O. Box 39508 Nairobi 00623.

14. There is evidence on record that invitation letters to attend before the registry to fix hearing dates and hearing notices were served upon the Respondent through that *postal address*.

15. The Court will therefore reiterate its finding in the judgment that service of *Notice of Summons* and hearing notice(s) were served upon the Respondent.

16. A party seeking the setting aside of an *ex parte* judgment should demonstrate that there are triable issues.

17. The Respondent did not file a draft *Response* or raise any triable issue through the supporting affidavit.

18. Among the heads of claim which had been presented by the Claimant were balances of admitted terminal benefits which the Respondent had failed to pay. The Respondent did not even attempt to rebut the contention that it owed the Claimant the balances of dues.

19. The Court finds no merit in the application dated 18 December 2018, and orders it dismissed with costs to the Claimant.

20. The monies deposited into Court should be released to the Claimant. Respondent to meet the auctioneer's charges.

**Delivered, dated and signed in Nairobi on this 29<sup>th</sup> day of March 2019.**

**Radido Stephen**

**Judge**

**Appearances**

For Claimant Ms. Martins instructed by Oyatta & Associates

For Respondent Mr. Njenga instructed by Macharia Gikonyo & Co. Advocates

Court Assistant Lindsey