



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA**

**CAUSE NO 300 OF 2016**

**LINUS IKABUTENI.....CLAIMANT**

**VERSUS**

**EXCELLENT SECURITY SERVICES LIMITED....RESPONDENT**

**RULING**

1. On 10<sup>th</sup> May 2018, I entered an *ex parte* judgment in favour of the Claimant and against the Respondent in the sum of Kshs. 75,645. The Respondent subsequently filed two applications dated 20<sup>th</sup> September 2018 and 24<sup>th</sup> September 2018, seeking orders of stay of execution and setting aside of the *ex parte* judgment.
2. In my ruling delivered on 27<sup>th</sup> November 2018, I dismissed both applications.
3. The Respondent subsequently filed the current application on 7<sup>th</sup> February 2019 seeking stay of execution pending appeal.
4. The application, which is supported by an affidavit sworn by the Respondent's Counsel, Eric Munzyu is based on the following grounds:
  - a) The Respondent filed an application dated 20<sup>th</sup> September 2018 seeking stay of proceedings and setting aside of *ex parte* judgment entered in favour of the Claimant;
  - b) The application was heard and a ruling reserved for 15<sup>th</sup> November 2018 on which date the Court did not sit;
  - c) The Respondent was not informed of any further date and only recently became aware that the ruling had been delivered dismissing the application;
  - d) The Claimant will not suffer any prejudice should the current application be allowed.
5. The Claimant's response is by way of Preliminary Objection raised by notice dated 11<sup>th</sup> February 2019 by which the Claimant simply states "THAT the said Application is *Res Judicata*."
6. I have looked at the Respondent's application together with the supporting affidavit and annexures and find that what the Respondent seeks in the current application is essentially what was sought in the twin applications dated 20<sup>th</sup> September 2018 and 24<sup>th</sup> September 2018. All the issues raised were exhaustively determined in the ruling delivered by the Court on 27<sup>th</sup> November 2018.
7. The application dated 6<sup>th</sup> February 2019 is therefore an abuse of the court process and the only thing to do is to strike it out with costs to the Claimant.
8. It is so ordered.

**DATED SIGNED AND DELIVERED AT MOMBASA THIS 14<sup>TH</sup> DAY OF MARCH 2019**

**LINNET NDOLO**

**JUDGE**

Appearance:

Mrs. Kariuki for the Claimant

Mr. Munzyu for the Respondent