

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA

CAUSE NUMBER 133 OF 2016

BETWEEN

WINFRED MUTHINA JOHN.....CLAIMANT

VERSUS

1. HATUA LIKONI ORGANIZATION

2. GABRIELLE FONDILLER

3. PETER KWAME MWAKIO.....RESPONDENTS

RULING

1. Judgment was delivered in favour of the Claimant herein, on 6th July 2018. The Respondents did not give evidence.
2. On 20th July 2018, the Respondents filed an Application asking the Court to set aside its Judgment and allow the Respondents to give evidence. They also asked the Court to stay execution of the decree, pending the outcome of this Application.
3. The Application is based on the Affidavit of 3rd Respondent Peter Kwame Mwakio, sworn on 19th July 2018. He states he was not in Mombasa when the matter was scheduled for hearing, and was therefore not able to attend Court. On other occasions, it is explained that the Respondents' Advocates were not in a position to attend Court for hearing.
4. The Claimant filed her Replying Affidavit sworn on 25th July 2018. She states that the Respondents are not sincere, having failed to give evidence, without reasonable ground. The Application is meant to delay execution of decree.
5. Parties agreed on 26th July 2018 to have the Application considered and determined on the strength of their Affidavits and Submissions.

The Court Finds:-

6. The Respondents were given adequate opportunity to present their case. They failed to do so. The Claimant closed her case on 16th December 2016. The Respondents applied for, and were allowed adjournment, with their Witnesses scheduled to be presented on 24th February 2017.
7. On 24th February 2017, the Court was informed that the Respondents' Witnesses had travelled to Nairobi. Adjournment was allowed again, with costs to the Claimant. Hearing was set for 11th December 2017, when none of the Respondents or their Advocates, attended Court. Proceedings were marked as closed, and Parties advised to file their Submissions.
8. The file history does not support the position of the Respondents, that they were denied the opportunity to present their case. They chose not to attend Court when required to do so. The 3rd Respondent states in his Affidavit, that the Respondents and their Advocates were unavailable when required to present their case. They cannot claim no opportunity was extended by the Court, to respond to the Claim through evidence. The Application is aimed at remedying Respondents' indolence and delay the Claimant, in enjoyment of the fruits of her litigation. ***The Application filed by the Respondent, dated 19th July 2018 is rejected with costs to the Claimant. The Claimant is at liberty to execute.***

Dated and delivered at Mombasa this 5th day of March 2019.

James Rika

Judge