



**REPUBLIC OF KENYA**

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

**CASE NO. 297 OF 2018**

*(Before Hon. Justice Mathews N. Nduma)*

**DR. NICKSON SHANGO.....CLAIMANT/RESPONDENT**

**VERSUS**

**UASIN GISHU COUNTY PUBLIC SERVICE BOARD..1<sup>ST</sup> RESPONDENT/APPLICANT**

**COUNTY GOVERNMENT OF UASIN GISHU.....2<sup>ND</sup> RESPONDENT/APPLICANT**

**RULING**

1. Application dated 21<sup>st</sup> November 2018 seeks for an order setting aside the order of the court issued on 31<sup>st</sup> October 2018 and any consequential actions emanating therefrom.
2. The application is based on grounds set out in the Notice of Motion to wit, that counsel seized of the matter one Mr. Henry Kenei was indisposed and was a way on a sick leave hence the failure by the respondent/applicant to file a replying affidavit to the application dated 18<sup>th</sup> September 2018 and failure to attend interpartes hearing of the application on 31<sup>st</sup> October 2018.
3. On 31<sup>st</sup> October 2018, the application dated 18<sup>th</sup> September 2018 was allowed having been unopposed and a court order issued thereto.
4. The application is opposed by a replying affidavit of the claimant/respondent Dr. Nickson Shango who states that the respondents were served with the application dated 18<sup>th</sup> September 2018 on 21<sup>st</sup> September 2018 together with a hearing notice scheduling the application for interpartes hearing on 31<sup>st</sup> October 2018.
5. That the respondents willfully failed to attend interpartes hearing of the application and same was allowed.
6. That on 1<sup>st</sup> November 2018, the respondents were served with the court order by the advocates for the claimant/respondent. The advocates notified the respondents/applicants to comply with the court order.
7. That the respondents/applicants ignored the court order until the 18<sup>th</sup> January 2019 when they served the present application on the advocates of the claimant/respondent which was over two months from the date the Applicants were served with the court order which they had not obeyed even as at the time of hearing of this application.
8. That the justification given for failure by Mr. Henry Kenei to attend court on 31<sup>st</sup> October 2018 and to file a response is flawed in that documents presented by Applicant show counsel was treated as an outpatient on 15<sup>th</sup> October 2018 and there is no evidence that counsel was given another appointment on 31<sup>st</sup> October 2018. That it is apparent that counsel was treated for a minor ailment. That he works in a firm with several advocates and the firm did not communicate to Advocates of the claimant at all.
9. That the respondents took two months to serve this application and without complying with the court order first.
10. That the applicants ought not to be indulged by this court having disregarded its orders and leisurely approached the court for stay and setting aside of the court orders.

**Determination**

11. An applicant who seeks exercise of discretion of the court in its favour must first obey the orders of the court they seek to be stayed. The applicant has come to court with dirty hands having failed to comply with the court order for a period of over two months.

12. Secondly the application discloses no plausible reason why the applicant failed to file a replying affidavit to the application dated 18<sup>th</sup> September 2018 which was timeously served on them on 21<sup>st</sup> September 2018. Furthermore, the reason given for failure to communicate to the counsel for the claimant and/or attend court on 31<sup>st</sup> October 2018 is not plausible and cannot stand.

13. The applicant must obey the court order that is still in place and then respond to the main suit upon which they will be heard on the merits. The applicant stand to suffer no prejudice in this regard.

14. The application is thus dismissed with costs.

**Ruling Dated, Signed and delivered this 31<sup>st</sup> day of July, 2019**

**Mathews N. Nduma**

**Judge**

**Appearances**

**Mr. Ombima for Claimant/Respondent**

**Mr. Githaiga for Respondent/Applicant**

**Chrispo – Court Clerk**