



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 2373 OF 2012

(Before Hon. Justice Mathews N. Nduma)

KENNEDY OMONDI.....CLAIMANT

VERSUS

CHARLES NEW NYAMOTE.....RESPONDENT

R U L I N G

1. Default Judgment in favour of the Claimant was delivered on 19th May, 2017.
2. Application to set aside the default judgment was filed on 18th September, 2017 and Hon. Lady Justice Ndolo granted interim orders on 20th September, 2017.
3. Replying Affidavit was filed on 2nd October, 2017 and the parties filed their submissions on 17th October, 2017 and 29th November, 2017 respectively. Interim orders were extended.
4. The file was transmitted and received in Kisumu on 18th January, 2018 providing that ruling will be on notice.
5. At the time the application was filed on 5th September, 2017 goods had been proclaimed pending execution.
6. The Applicant stated that the Memorandum of Claim with Summons to Enter Appearance were never served. That the Respondent has a good defence which discloses triable issues and in particular that the Respondent did not at all employ the Claimant and this was a false employment claim.
7. The Application is opposed vide the Replying Affidavit of the claimant stating that the application is frivolous, vexatious and a waste of precious court's time.
8. That the Applicant has not in the application sought to cross examine the process server and therefore he is unable to demonstrate to the court that he was not served on the face of a proper service having been done on the Applicant on 4th December, 2012 and an Affidavit of Service duly filed.
9. The Court is satisfied that the Respondent/Applicant was duly served in person by one Benjamin Mutua on 14th December, 2012 in his office at St. Charles Mutegi Educational Centre, along Lenana – Mutuine Road.
10. That a proper Affidavit of Service sworn by the process server on 9th January, 2017 was filed in court on 14th February, 2017.
11. The Respondent did not file any statement of response for a period of more than five years. The suit proceeded to formal proof on 15th February, 2017 and Judgment delivered on 19th May, 2017.
12. The Respondent has no justifiable cause at all to persuade the court to set aside its judgment. The Respondent is caught by the doctrine of laches and any further delay in this matter will amount to grave injustice against the Claimant.
13. The court is satisfied from the statement of claim, vivavoce evidence by the Claimant and the documentary evidence produced in court

that there was an employment relationship between the Claimant and the Respondent. The Respondent has no arguable defence in the circumstances of this case.

14. The Application to set aside the judgment of the court is dismissed and the interim orders discharged.

Dated and Signed in Kisumu this 20th day of July, 2018

Mathews N. Nduma

Judge

Delivered and signed in Nairobi this 10th day of August,2018

Maureen Onyango

Judge

Appearances

Mr. Nyabena for Respondent/Applicant

Mr. Ogwe for Claimant/Respondent

Anne Njung'e – Court Clerk