



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAKURU**

**CAUSE NO.403 OF 2014**

**GEOFFREY RONO.....CLAIMANT**

**VERSUS**

**NAKURU COUNTY AP COMMANDER .....1<sup>ST</sup> RESPONDENT**

**INSPECTOR GENERAL OF POLICE .....2<sup>ND</sup> RESPONDENT**

**HON. ATTORNEY GENERAL .....3<sup>RD</sup> RESPONDENT**

**RULING**

The respondents by application and Notice of Motion dated 24<sup>th</sup> December, 2016 are seeking for orders in their substance to stay proceedings and judgement delivered on 11<sup>th</sup> November, 2016 be set aside and the suit proceed for hearing of the defence. The application is stated as being supported by the affidavit of NGUYO WACHIRA and attached to the application is the affidavit of FRANCIS N M KIRATHE, HSC (AIG) the Administration Police Commander, Rift Valley Region.

The Certificate of Urgency is executed by NGUYO WACHIRA, Senior State Counsel at the Attorney General Chambers at Nakuru.

The application is made on the grounds that there is an imminent danger of execution since a decree has been extracted and the respondents are prejudiced since judgement was entered without defence being heard. The witness statement was filed late y 6 days and the respondents were denied justice. The right to a fair hearing has been severely impaired and the court has awarded claimant wages for a period he worked under disguise and with a forged reinstatement letter. The respondents were not aware the court had placed the matter for hearing on 5<sup>th</sup> October, 2016.

As noted above, the affidavit in support of the application is done by a stranger.

In reply the claimant filed a Replying Affidavit and avers that the application by the respondents is in abuse of court process and *res judicata* and on the basis that the orders sought seek to reopen the hearing which was sought in a similar application dated 18<sup>th</sup> February, 2016 and court delivered ruling on 23<sup>rd</sup> September, 2016. The respondents were granted the orders sought but failed to comply as directed. The application now filed is seeking similar orders as earlier applied for and such is in abuse of the court process.

Parties agreed to address the application by way of written submissions on 18<sup>th</sup> September, 2018. Only the claimant complied and filed written submissions on 13<sup>th</sup> September, 2018. The respondents did not attend at the mention date to confirm filing of submissions.

The application by the respondents is empty. It is without a supporting affidavit. The person stated under the grounds thereto as the deponent has not attached any affidavit.

Rule 17(8) of the Employment and Labour Relations Court (Procedure) Rules, 2016 requires that;

*(8) A notice of motion shall state in general terms the grounds of the application and where the motion is supported by an affidavit, both the notice of motion and a copy of the affidavit shall be served on the other party.*

Order 51, Rule 4 requires that every notice of motion should state in general terms the grounds of the application, and where any motion is grounded on evidence by affidavit, a copy of any affidavit intended to be used should be attached thereto.

On the substance of the application before court, the respondents By application dated 10<sup>th</sup> March, 2016 the respondent moved the court by way of Certificate of Urgency seeking for orders of stay of proceedings and due judgement for the suit to proceed with the hearing of the

defence.

By Ruling delivered on 23<sup>rd</sup> September, 2016 the court allowed the application and to ensure the respondent were given a hearing as requested the scheduled judgement was put in abeyance and the respondents given until 30<sup>th</sup> September, 2016 to file and serve their witness statements and in default the due judgement would be delivered.

There was no compliance and the court read judgement on 11<sup>th</sup> November, 2016.

The application herein is seeking for stay of proceedings and the judgement delivered on 11<sup>th</sup> November, 2016 be set aside and the suit to proceed for defence hearing. The reasons given are that the respondents delayed in the filing of witness statements by 6 days and should not be locked out.

The substance of the orders sought in the application dated 10<sup>th</sup> March, 2016 and application dated 24<sup>th</sup> December, 2016 are similar. Each is seeking for orders of stay of proceedings and that the respondent be allowed to proceed on the defence.

Such matter has already been addressed by the court. In that regard the court is *factus officio*.

Judgement has since been delivered and execution process commenced. The application dated 24<sup>th</sup> December, 2016 was not filed until 1<sup>st</sup> February, 2017. The application was left at large until 11<sup>th</sup> July, 2018 when the respondents filed a Certificate of Urgency.

The delay and obvious lapse in non-compliance with the orders issued on 11<sup>th</sup> November, 2016 does not aid the respondents' case.

Upon the realisation that the respondents had lost 6 days in terms of compliance with the orders issued on 11<sup>th</sup> November, 2016 nothing was done to move the court with speed and urgency to seek for the extension of time.

What the respondents are now seeking a solid two (2) years after the fact of orders of 11<sup>th</sup> November, 2016 cannot stand a chance at the seat of justice. Such delay is inordinate and cannot be justified.

Application has no foundation on many fronts and must fail.

**Accordingly, application dated 24<sup>th</sup> December, 2016 is hereby dismissed. The respondents shall pay costs. Such costs are assessed at ksh.25, 000.00.**

Dated and delivered in court at Nakuru this 15<sup>th</sup> day of November, 2018.

**M. MBARU**

**JUDGE**

In the presence of: .....