

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI

CAUSE NO.1017 OF 2017

MAURICE LIBWEGE BUKASA..... CLAIMANT/RESPONDENT

-VERSUS

NOBLE GASES INTERNATIONAL LIMITED.....RESPONDENT/APPLICANT

(Before Hon. Justice Byram Ongaya on Friday 2nd November, 2018)

RULING

The applicant filed a notice of motion on 10.07.2018 through Majanja Luseno & Company Advocates. The application was under Article 48 and Article 50 (1) of the Constitution of Kenya 2010, sections 1A, 1B and 3A of the Civil Procedure Act, Cap. 21, Order 10 Rule 11 and Order 51 Rule 1 of the Civil Procedure Rules 2010, section 12 of the Employment and Labour Relations Court Act 20 of 2011, Rule 17 & 28 (1) (b) of the Employment and Labour Relations Court (Procedure) Rules, 2016 and all other enabling provisions of law. The substantive prayers in the application subject of this application are as follows:

- a) That the ex-parte judgment entered against the respondent now applicant on 22.06.2018 and all other consequential orders be set aside upon such terms as are expedient and just.
- b) That the applicant is granted leave to defend the cause.
- c) That leave be granted to the applicant to file memorandum of response out of time.
- d) Those costs of the application be borne by the claimant.

The grounds to support the application are that the applicant was not served with the summons to enter appearance; the applicant was not served with notices for mentions or hearing; the applicant has a good defence that raises triable issues; and granting the application will meet the ends of justice. The application was supported with the affidavit of Jaspal Nyotta, the respondent's Managing Director filed on 10.07.2018.

The claimant opposed the application by filing his replying affidavit on 24.07.2018 through Njuru & Company Advocates. The claimant's case is that the service of all processes was effected at the same place and while the respondent admits service of the notice of taxation and bill of costs, it denies service of the summons and notices at that same place. Further the respondent does not deny that its offices are located at the place the service was effected. Summons was again re-served by registered post as directed by the Court but the respondent declined to act by entering appearance.

The Court has considered the material on record. It is clear that the claimant served the statement of claim as well as the summons and further served all mention notices and hearing notices. The Court further finds that as submitted for the claimant the notice of taxation and the bill of costs were served at the same place, the respondent's reception and there is no justifiable explanation that the previous service may not have been received but the service of the taxation notice and the bill received.

The Court returns that the respondent was effectively served with all processes in the suit but opted not to take appropriate steps in the matter towards defending the suit. Under section 3(1) of the Employment and Labour Relations Court Act, 2011, the principal objective of the Act is to enable the Court to facilitate the just, expeditious and proportionate resolution of disputes governed by the Act. Under section 3 (3) thereof, the parties and their representatives, as the case may be, shall assist the Court to further the principal objective and, to that effect, to participate in the proceedings of the Court and to comply with directions and orders of the Court. The Court returns that the applicant's conduct in this matter including failure to take relevant steps in the suit after the respective service at each step and the subsequent filing of the present application are clear manifestations of the applicant's infringement of its proper duty under section 3(3) of the Act. The Court returns that the application must fail with costs in favour of the claimant.

In conclusion the application filed for the applicant on 10.07.2018 and date 09.07.2018 is hereby dismissed with costs and further steps in the matter to proceed accordingly towards satisfaction of the judgment.

Signed, dated and delivered in court at Nairobi this Friday 2nd November, 2018.

BYRAM ONGAYA

JUDGE