



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT NAIROBI**

**CAUSE NO. 1092 OF 2015**

**EVELYNE MUSIMBI ENONDA .....CLAIMANT**

*VERSUS*

**JERIDA ANYONGA .....RESPONDENT**

Claimant in person

Mwendwa, Macharia, Mwangi & Co. Advocates for respondent

**RULING**

1. The applicant in the notice of motion filed on 11/8/2016 seeks the courts not to deliver judgment in this matter before hearing the defence case.
2. The claimant presented his case and was cross examined by counsel for the respondent.
3. Defence hearing was set for 22<sup>nd</sup> July 2016 when the respondent counsel informed the court that the respondent was ill and was admitted in hospital and was unable to attend court therefore Counsel for the claimant left the matter to court.
4. The court made the following order “*As case was slated for hearing today and there is no evidence of the stated hospitalisation, court declines application for adjournment.*”
5. The respondent’s counsel Mr. Macharia told the court as follows “*We will file submissions. I need 3 weeks.*”
6. The court proceeded to give directions on the filing of submissions.
7. The application to set aside the order to close the respondent’s case is supported by an affidavit of the respondent sworn on 4<sup>th</sup> April 2016 to which is attached a photocopy of a medical note dated 21.7.2014 from the Nairobi Women’s Hospital. The document shows that the respondent was admitted at the hospital on 21/7/2016 and discharged on the same date. She had been diagnosed with dehydration and was attended to by Dr. Ndolo. The copy is certified to be a copy of the original.
8. Attached to the medical note is a letter dated 21/7/2016 “*to whom it may concern*” but does not bear the name of Dr. Ndolo nor a stamp of the hospital.
9. There has to be persuasive evidence for a court to interfere with the discretion of a trial judge. The document presented to me is not such persuasive evidence in that the purported one day off-day was not granted by the doctor who treated the patient.
10. For these reasons the application is dismissed and the court will proceed to grant a judgment date.

**Dated and delivered at Nairobi this 24<sup>th</sup> day of February 2017**

**MATHEWS NDERI NDUMA**

**PRINCIPAL JUDGE**