



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF
KENYA AT NAIROBI
CAUSE 2090 OF 2015

JOSEPH MULINGE.....CLAIMANT

VERSUS

GAYES KITCHEN LIMITED.....RESPONDENT

RULING

1. By a Notice of Motion dated 10th November, 2016 the respondent seeks the setting aside of the judgement entered on 15th August, 2015 and that the respondent be granted leave to defend the suit.
2. The application was supported by the affidavit of Nelson Osiemo Advocate who stated he received summons to enter appearance together with statement of claim on 4th December, 2015. He further stated that he received a mention notice on 23rd February, 2016 for 20th March, 2016 which was a Sunday. A second mention notice for 23rd June, 2016 was served on him on 6th June, 2016 but he could not attend because he had matters fixed prior to the notice at Kajiado Law Courts on the same day. On this day, 23rd June, 2016 the suit was marked as undefended and a hearing date fixed for 18th July, 2016.
3. Setting aside a judgement is a matter of discretion of the court. An applicant for the order must bring such an application promptly and must demonstrate in the application good reason why the judgement should be set aside. The applicant must further show he or she has a good defence to the claim.
4. The applicant herein states that they were served with summons to enter appearance on 4th December, 2015. They entered appearance on 7th December, 2015 but did not file a defence within stipulated time. No reason has been given in the present application why this happened. The claimant served the respondent's counsel with a mention notice for 23rd June, 2016 but counsel could not attend because he had matters fixed prior to that at Kajiado Law Courts. Counsel has not said what prevented him from asking a colleague to hold his brief at the mention.
5. As observed earlier, setting aside of a judgement is discretionary and will only be done for a good cause. The applicant herein was aware of the commencement of these proceedings. They entered appearance through counsel but failed to file a defence. When this matter was ordered to proceed as undefended cause it was some seven months after service of summons.
6. No reason has been provided by the respondent why this did not happen. Further despite being aware of the mention set for 23rd June, 2016 the respondent's counsel never bothered to send someone to hold his brief or follow up on what transpired at the mention. The conduct of the respondent shows a person

who either took the court process for granted or did not have a defence to the claim.

7. The court's discretion cannot therefore be exercised in aid of a party who does not respect its process. The court therefore finds no merit in the application and dismisses the same with costs.

8. It is so ordered.

Dated at Nairobi this 24th day of March 2017

Abuodha J. N.

Judge

Delivered this 24th of March 2017

Abuodha J. N.

Judge

In the presence of:-

.....for the Claimant

.....for the Respondent.

Abuodha J. N.

Judge