



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
CAUSE NO. 624 OF 2014

STEPHEN SAGANA KIPKUT

CLAIMANT

v

LAMINATE TUBE INDUSTRIES LIMITED

RESPONDENT

RULING

1. In a judgment delivered on 11 November 2016, the Court found and held that the termination of the Claimant's employment was unfair and awarded him Kshs 285,216/- as compensation.
2. On 23 January 2017, the Respondent moved Court seeking
 - a) This application be certified as urgent and service thereof be dispensed with in the first instance
 - b) There be stay of execution pending the hearing and determination of this application interparties
 - c) There be a stay of release to the claimant of the decretal dues paid in court pending the interparties hearing of this application
 - d) The judgment herein be set aside
 - e) The claimant's and defence cases be reopened and the defence be granted leave to cross examine the claimant and tender evidence in support of the defence case
 - f) Costs to be in the cause.
3. When the application was placed before Court on 24 January 2017, the Court granted prayer b) because the record indicated that the decretal sum had been deposited in Court.
4. The motion was served upon the Claimant and he filed Grounds of Opposition on 26 January 2017 and arguments were taken on 6 March 2017.
5. The substantive orders pending determination are the proposed orders c), d) and e).
6. The main ground advanced by the Respondent in seeking the orders sought are that the hearing proceeded in the absence of its advocate who had left Court on the date of hearing and it should not be punished for the mistake of its advocate, it has a good defence, the Claimant can be compensated with costs if the orders are allowed and that the interest of justice demands that the orders be granted.
7. The Claimant in opposing the motion urged that the same was meant to delay execution which had

commenced and that the Respondent's properties had already been proclaimed.

8. In the judgment adverted to, the Court observed at paragraph 2 that the advocate who had conduct of the Respondent's case was present when the Court was going through the cause list and allocated the hearing time, but when the Cause was called out at the scheduled time, the said advocate was not present.

9. An advocate has a professional obligation both to the client and to the Court to be present in Court and when not able to be present, to make appropriate arrangements for representation and/or to arrange for the Court to be informed of any reasons for being away, even if temporarily.

10. The Respondent has not explained either in the supporting affidavit or on the face of the motion where the advocate who earlier took directions as to the hearing time went to and without any explanations, the Court can conclude that the conduct was not only unprofessional but reckless.

11. The said advocate has also not filed any affidavit to explain her whereabouts at 10.15am when the Cause was slated for hearing.

12. The Court is therefore unable to exercise its discretion in favour of the Respondent despite the payment of the decretal sum into Court.

13. In the event, the Court dismisses the motion dated 23 January 2017 with costs to the Claimant.

14. The Court further orders that the decretal sum be released to the Claimant's advocate on record after 7 days, unless a stay is secured from the Court of Appeal.

Delivered, dated and signed in Nakuru on this 28th day of April 2017.

Radido Stephen

Judge

Appearances

For Claimant Mr. Morande instructed by Chepkwony & Co. Advocates

For Respondent Mr. Leparmarai instructed by Kamau Lagat & Co. Advocates

Court Assistant Nixon