



REPUBLIC OF KENYA
EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 1943 OF 2013

ASORO MWENJE ASTONE..... CLAIMANT

VERSUS

RILEY SERVICES LIMITED..... RESPONDENT

Mr. Agimba for respondent/applicant

Mr. Mwimali for claimant/respondent

RULING

1. By a notice of motion application dated 4th February 2016, the respondent/applicant seeks to stop delivery of the judgment by the court in this matter until the respondent is heard in the matter on the ground that the claim was heard exparte in the absence of the respondent on 19th October 2015.
2. On the 19th January 2015, when the matter was set for hearing, the respondent was represented by Mr. Kwame for Mr. Agimba and Mr. Githinji for Mwimali represented the claimant at 9.30 a.m. in the morning.
3. Mr. Kwame informed the court that Mr. Agimba would not be ready to proceed with the case because he had come across new facts and issues and wished to amend statement of defence. That he wished to file a formal application to that effect.
4. Mr. Githinji stated that he had limited instructions. The file was put aside for 12.25 to await counsel on record to proceed with the matter.
5. At 12,25 p.m. a Mr. Kosgey appeared for Mr. Agimba and Mr. Masavilo for Mr. Mwimali for claimant. Mr. Kosgey told the court that the matter had been transferred from the lower court and respondent needed to process new facts and put in witness statements and amend statement of defence and was not ready to proceed.
6. Mr. Masavilo opposed the application stating that he was ready to proceed. That the matter was transferred from lower court in 2013 and no such indication to amend the defence was shown by the respondent.
7. That he had been served with the statement of defence that morning and it was filed on 26th February 2009. That the defendant was just trying to buy time yet the claimant had waited for long and had

travelled from Luanda, Western Kenya for the hearing. He opposed the application strongly stating that the cause of action arose in 2008 and is for payment of terminal benefits.

Determination

8. The court, refused the adjournment on the basis that this was an old matter and no good reason had been advanced to adjourn the matter.

9. The court took evidence of the claimant and considered the claim filed by the claimant and the statement of defence filed by the respondent and proceeded to deliver judgment on 22nd Janaury 2016.

10. The application before court was aimed at preventing the delivery of the judgment. The application was overtaken by events because judgment was delivered on 22nd Janaury 2016 before the application was heard and determined.

11. The reason for not participating in the hearing placed before the court on 19th October 2015 by Mr. Kwame and Mr. Kosgey who held brief for Mr. Agimba are completely different from what is deposed to in paragraph 5 (a) (b) and (c) of the affidavit of Mr. Agimba sworn on 4th February 2016.

12. The facts deposed to in support of the application are in contradiction to what the court was told by the advocates who held brief for Mr. Agimba on 19th October 2015. When the matter proceeded exparte and cannot be justification to review the decision of the court to proceed with the matter on the said date.

13. The application lacks credibility and is an abuse of the court process.

14. The same is dismissed with costs.

Dated and Delivered at Nairobi this 19th day of May 2017

MATHEWS NDERI NDUMA

PRINCIPAL JUDGE