



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO 483 OF 2015

MOSES WANJIMA MWANGI.....CLAIMANT

VERSUS

VERT LIMITED.....RESPONDENT

RULING

1. On 2nd July 2015 this matter came up for pretrial directions and my brother **Abuodha J**, noting that the Respondent had failed to file a Reply, directed that the matter proceeds as an undefended claim. I therefore heard the Claimant ex parte on 30th March 2016 and on 31st May 2016, I made an award in his favour in the sum of Kshs. 280,000 plus costs.

2.The Respondent subsequently came to Court by way of Notice of Motion dated 29th November 2016 seeking orders for stay of execution and setting aside of the judgment of the Court.

3.The application which is supported by an affidavit sworn by the Respondent's Managing Director, Josphat Nderito Maina is based on the following grounds:

a)The judgment was entered without full disclosure by the Claimant that he had on 2nd October 2013, executed a discharge voucher releasing the Respondent from any claims arising from his employment with Respondent;

b)Having executed the said discharge voucher the Claimant was estopped from lodging any claim against the Respondent;

c)Having sought an equitable relief from the Court, the Claimant was duty bound to make full disclosure of all the facts so as to enable the Court make a just decision.

4. The Claimant filed grounds of opposition on 12th January 2017 and a replying affidavit on 25th January 2017. He states that the Respondent ignored court process by failing to defend the claim.

5. The Claimant adds that the current application is misconceived as it seeks to review the judgment based on the allegation that the Claimant had undertaken not to pursue any claim against the Respondent yet no such defence had been filed.

6. I have looked at the Respondent's application together with the supporting affidavit sworn by Josphat Nderito Maina and note the following:

a) That although the main prayers sought in the application are for stay of execution and setting aside of the judgment of the Court no grounds have been advanced to support such an application;

b) That instead, the supporting affidavit sworn by Josphat Nderito Maina contains statements which ought to have been included in the

Respondent's defence which was never filed;

c) That no reason has been given for the Respondent's failure to file its defence and the long delay in bringing this application has not been explained.

7. For the foregoing reasons the Respondent's application dated 29th November 2016 is dismissed with costs to the Claimant. The interim orders granted on 23rd December 2016 are vacated.

8. Orders accordingly.

DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI

THIS 5TH DAY OF MAY 2017

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JUDGE

Appearance:

Mr. Njuguna for the Claimant

Mr. Njenga for the Respondet