



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF

KENYA AT NAIROBI

CAUSE NUMBER 2090 OF 2015

JOSEPH MULINGE MBIVYE.....CLAIMANT

VERSUS

GAYES KITCHEN LIMITED.....RESPONDENT

RULING

1. The applicant herein through an application dated 1st November, 2016 sought to set aside the judgment of this court delivered on 15th August, 2016. That application was dismissed by the court for lacking in merit. The present application seeks the stay of that ruling pending an appeal therefrom.
2. Mr Wara for the applicant contended that if the decretal sum is paid to the claimant it would not be recoverable from claimant if the appeal is successful. Counsel further stated that the respondent was ready to abide by any condition the court might impose before making an order for stay.
3. The ruling of the court delivered on 24th March, 2017 was on merit. The court considered that application and the circumstances under which it was brought and became of the view that either counsel for the respondent or the respondent itself did not take the court process seriously. The respondent in that earlier application failed to provide any satisfactory reasons why it never filed a response to the claim and why they omitted to attend court on 18th of July, 2016. The court may have been wrong in not exercising its discretion in favour of the respondent and the respondent is within its right to appeal against that ruling as it intends to.
4. The present application in a sense presents itself as an appeal against my ruling of 24th March, 2017 or more or less a rehearing of that application. It places me in a rather uncomfortable situation where I have to relook at my decision and perhaps tell myself that I may have been wrong in exercising my discretion the way I did and that the Court of Appeal may set aside my ruling.
5. The court did its best and rendered itself the way it did in its ruling delivered on 24th March, 2017. The matter should therefore be left to the appellate court to consider and if persuaded by the applicant stay that ruling.
6. The court therefore refuses to grant the orders sought in the present application and hereby dismiss the same with costs.
7. It is so ordered.

Dated at Nairobi this 21st day of July 2017

Abuodha J. N.

Judge

Delivered this 21st day of July 2017

In the presence of:-

..... for Claimant

.....for Respondent

Abuodha J. N.

Judge