



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NYERI

CAUSE NO. 19 OF 2016 COSOLIDATED WITH CAUSES 20, 21 AND 22 ALL OF 2016

SOLOMON WAFULA.....1ST CLAIMANT

SIMON KAHURA IRUNGU.....2ND CLAIMANT

ALICE WANJIKU KIMANI.....3RD CLAIMANT

RUFUS WANJIE GATHINGU.....4TH CLAIMANT

VERSUS

BABS SECURITY SERVICES LIMITED.....RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday, 14th July, 2017)

RULING

The court delivered the judgment in the suit on 18.11.2016. The court ordered the respondent to pay the claimants their redundancy dues being Kshs.16, 603.90, Kshs.95, 860.00, Kshs.59, 009.50, and Kshs.52, 032.80 respectively. The claimants were also awarded costs of the suit which have since been taxed at Kshs.48, 975.00.

The respondent has filed an application on 26.05.2017 through Macharia Gakaria & Associates for orders that the judgment delivered on 08.12.2011 be set aside, the respondent be given unconditional leave to file a statement of defence, and costs of the application be provided for. The application was by the notice of motion under order 10 rule 11, order 22 rule 22 of the Civil Procedure Rules, section 3A of the Civil Procedure Act, and all enabling provisions of law.

The application is based on the supporting affidavit of Samuel Mureithi, the respondent's operations manager and the following grounds:

- a) The respondent was not served with summons to enter appearance.
- b) Thus the defendant was not afforded the chance to defend the suit.
- c) respondent has a meritorious defence to the suit.
- d) The application is made without unreasonable delay.
- e) The claimants will not suffer prejudice as the suit will go for full hearing on merits.

The application is opposed by the affidavit of Julius N. Kirubi Advocate for the claimant. It is stated that the application is an abuse of court process calculated to delay execution of the judgment. He confirms that the summons to enter appearance was served as per the affidavits on record. The relevant mention and hearing notices had been served but the respondent had failed to take steps to attend court. Thus there was no ground to set aside the judgment.

The court has considered the parties' respective submissions and the material on record and returns that the application must fail because of the following findings.

- a) court finds that the applicants seeks setting aside of the judgment entered herein on 08.12.2011 but which judgment is not on record as the prayer is incurably misconceived.
- b) The court finds that at all material times the applicant was dully served with the summons to appear, mention notices, and hearing notices but obviously opted not to take steps in the suit or to attend court.
- c) The applicant has not exhibited a draft defence with serious triable issues or given any indication as to the line of defence in the suit.
- d) The application was dated 27.02.2017 and filed on 26.05.2017 for to unexplained reasons in view of the delay in filing. The court considers the delay to have been a clear abuse of court process and as submitted for claimants, such must have been designed to unfairly delay execution of the judgment.
- e) The court finds that the applicant therefore is undeserving of favourable discretion of the court.

In conclusion the application by the notice of motion dated 27.02.2017 and filed on 26.05.2017 is hereby dismissed with costs of the application now fixed at **Kshs. 25,000.00** only.

Signed, dated and delivered in court at **Nyeri** this **Friday, 14th July, 2017.**

BYRAM ONGAYA

JUDGE