



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT NAIROBI**

**CAUSE NUMBER 295 OF 2014**

**ISAAC MULI MUASYA.....CLAIMANT**

**VERSUS**

**LAVINGTON SECURITY LIMITED.....RESPONDENT**

**RULING**

1. By a Motion dated 3<sup>rd</sup> July, 2015 the respondent sought stay of execution of the judgement of this court entered on 6<sup>th</sup> March, 2016.

2. The application was based on the grounds that the ex-parte judgement had been entered irregularly despite the respondent having been served but inadvertently or mistakenly misplacing the summons and copy of the claim hence was unable to instruct counsel. The applicant further stated that it had a good and meritorious defence to the claim. The applicant also contended that the entry of judgement was irregular, improper and unsustainable in law.

3. Stay of execution or setting aside judgement is a matter upon the discretion of the court. It is a discretion which the court will not exercise as a matter of course. Whereas a party has a right to be heard, that right must be exercised with diligence especially when it comes to litigation. A party is not permitted to ignore or become careless with the court process only to apply for setting a side or stay after judgement has been entered. Setting aside a judgement entails double work for the court and should only be done in merited cases and upon terms. The mere fact that a party was not heard is not enough. The party must demonstrate that he or she has a valid defence to the claim before the discretion can be exercised in his favour.

4. The court has reviewed and considered the draft defence attached to the instant application and is of the view that it raises a reasonable defence. The reasons given for not filing a defence on time are however not very convincing. The court will however allow the application but on terms that the decretal sum be deposited in court within 30 days of this ruling in default execution to proceed.

5. It is so ordered.

Dated at Nairobi this 22<sup>nd</sup> day of September, 2017

**ABUODHA J. N.**

**JUDGE**

Delivered this 22<sup>nd</sup> day of September, 2017

**NDERI NDUMA**

**JUDGE**

In the presence of:

.....for Claimant

.....for Respondent