



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAIROBI
CAUSE NO. 1570 OF 2017
DR. SAMMY KANDIE NG'OCHOCH.....CLAIMANT/RESPONDENT
VERSUS
AAR HEALTH CARE
HOLDINGS LIMITED.....RESPONDENT/APPLICANT

Mr. Kuyo for respondent/applicant

Mr. Mukele for claimant/respondent

RULING

1. The application dated 24th August 2017 seeks to set aside *ex parte* orders granted by the court on 16th August 2017 on the ground that the claimant had failed to notify the advocate on record of the date the matter came before court, and the claimant was also guilty of material non-disclosure that even though he sought payment of July and August 2017 salary, he had not reported back to his work station upon relocation from Tanzania where he had been seconded back to Kenya.
2. That the claimant also failed to disclose that the respondent had not altered the terms of service of the claimant upon recall to Kenya and that the applicable salary is that contained in the letter dated 19th July 2017.
3. That the *ex parte* orders are final in nature and are in contravention of Rule 17 (1) of the Employment and Labour Relations Court (Procedure) Rules 2016.
4. That even though the applicant has complied with interim orders by paying the July and August salary, they are entitled to recover the money since the claimant did not attend work.
5. That the orders be set aside *ex debito justitiae* and the claimant's application be heard *inter partes* on merit.
6. The application is opposed vide a replying affidavit of the claimant sworn on 14th September 2017 in which he states that the orders sought to be set aside were made pursuant to a fresh application for the matter to be certified urgent and therefore the Duty Judge granted the *ex parte* orders appropriately.
7. That it is incumbent on the respondent to respond to the application and the same be heard *inter parte*

on the merits.

8. The claimant denies any material non-disclosure to warrant the court to set aside the orders of the court, which in any event have been partially complied with.

9. Claimant insists that terms of his secondment are applicable in Kenya and the applicant is misleading court in this respect. The respondent/applicant clearly is attempting to illegally change his terms of service hence the application.

Determination

10. The court has in the recent past decried the common practice by litigants faced with *ex parte* interim orders to file a counter application instead of responding to the initial application so that it can be heard and disposed of *inter partes* expeditiously.

11. This practice has made courts to deal with numerous applications hence compromising proper management and use of court's time. This court deplores this practice in that it is self-defeating as it delays expedient disposal of the case and delays justice for the other party.

12. In the present case, the court notes that the respondent/applicant has filed a replying affidavit to the initial application dated 31st August 2017.

13. The court finds no merit at all in setting aside the interim orders issued on 16th August 2017 which have been partially complied with.

14. The competing views on the merits and demerits of the initial application may only be determined upon hearing both parties.

15. The key issue in the matter is whether the claimant ought or not to retain the terms and conditions of service he enjoyed while serving the respondent on secondment in Tanzania upon recall to the Head Office in Kenya.

16. Accordingly, the court directs that the suit be mentioned before the Principal Judge for the purpose of either granting a date for *inter partes* hearing and determination of the initial application filed on 31st August 2017 or better still if the parties are amenable to it, for setting of a hearing date of the main suit on the merits.

17. This application is dismissed with costs in the cause.

Dated, Signed and Delivered on this 24th Day of November 2017

MATHEWS NDERI NDUMA

JUDGE