



**REPUBLIC OF KENYA**  
**EMPLOYMENT AND LABOUR RELATIONS COURT**  
**AT NAIROBI**  
**CAUSE NO. 2145 OF 2014**

(Before Hon. Justice Hellen S. Wasilwa on 27<sup>th</sup> January, 2016)

**KENYA HOTELS AND ALLIED WORKERS UNION .....CLAIMANT**

**VERSUS**

**SENTRIM KENYA LIMITED .....1<sup>ST</sup> RESPONDENT**

**KUDHEIHA WORKERS .....2<sup>ND</sup> RESPONDENT**

**RULING**

1. The Application before Court is the Notice of Motion dated 27.5.2015. The Application is filed by the Respondents herein under Article 48 of Constitution of Kenya 2010, Section 12(1) (b), 3(i) (ii) of the Industrial Court Act 2011, Order 10 Rules 11 of the Civil Procedure Rules 2010, Rule 16 and 27 of Industrial Court (Procedure) Rules 2010).
2. The Applicants seeks orders that:
  1. *This Honourable Court do certify this application as urgent and dispense with service thereof in the first instance.*
  2. *This Honourable Court be pleased to set aside its judgment made on 14<sup>th</sup> May 2015 together with any consequential decree, orders and/or pending thereto.*
  3. *This Honourable Court be pleased to issue temporary injunction against the Claimant, its agents, employees or any person acting for the Claimant from enforcing the same award given on the 14<sup>th</sup> May 2015 and/or executing any decree there from pending the hearing and determination of this application.*
  4. *This Honourable Court be pleased to grant leave to the Respondent to file its response in terms of the annexed draft statement of response and to deem the same as duly filed and serve upon the Claimant.*
3. Application is supported by the annexed affidavit of Tonge Yoya and on the grounds that:

1. *On 8<sup>th</sup> December 2014 the Claimant served the Respondent with application under Certificate of Urgency together with Memorandum of claim scheduled for inter-partes hearing on 9<sup>th</sup> December 2014.*
2. *On the said 8<sup>th</sup> December 2014 the Respondents appeared in court and requested for more time to put in response since the notice of one day was too short which request the court allowed, gave 21 days for the same and the matter was scheduled for hearing of application on 13<sup>th</sup> May 2015.*
3. *The Respondent assigned the conduct of the matter to their Legal Officer Mr. Tonge Yoya who filed and served response through a Preliminary Objection dated 9<sup>th</sup> January 2015 on 16<sup>th</sup> January 2015.*
4. *Regrettably, but quite unfortunate, when the matter came up for hearing on 13<sup>th</sup> April, 2015 Mr. Tonge Yoya was unable to attend the court since he was stuck in Kisumu due to car mechanical breakdown and subsequently a colleague Mr. Stanlus Buleti who was sent to hold the Respondents brief arrived in court when the matter was already heard ex-parte and the Claimant directed to file submissions for ex-parte judgment.*
5. *On 28<sup>th</sup> April 2015 the Respondent filed application dated 24<sup>th</sup> April 2015 seeking to set aside the direction of court and fix the matter for inter-partes hearing which application was heard on 11<sup>th</sup> May 2015 but instead of directing inter-partes hearing the court ruled that the Respondent has an option to set aside the judgment of the court once delivered on 14<sup>th</sup> May 2015.*
6. *It is therefore very clear that unless this Honourable Court exercises its discretion to intervene as prayed herein above, the Claimant is likely to enforce the judgment herein and execute against the Respondent to the detriment of the Respondent who will suffer immense loss and as such amount to condemnation of the Respondent without affording them a chance to be heard.*
7. *The Claimant on the other hand does not stand a chance to be prejudiced should the relief sought herein be granted since whereas the Claimant may have its day in court and be heard in rebuttal, the Respondent will not have any other chance to be heard if the sought relief are not granted.*
8. *It is therefore in the interest of fairness, justice and the overriding objective of the law that relief sought herein above be granted unconditionally given the unique circumstance befalling the Respondent, as described above, but who in any event, is ready and willing to comply with such orders as the Honourable Court may deem just and expedient to make, in the circumstances.*
4. The main contention by the Applicants is that on the day for hearing of the suit on 13.4.2015, the Counsel for Applicant was unable to attend as he was stuck in Kisumu as his car had a mechanical breakdown. He asked a colleague to hold brief who arrived late when matter had been heard exparte and Claimant directed to file submissions for exparte judgment.
5. On 28.4.2015, the Applicant filed an application to set aside the exparte hearing and set matter for interpartes hearing and this application was scheduled to be heard on 11.5.2015. That on this day the Court declined to direct interpartes hearing but directed that the Respondent could proceed and ask for setting aside the judgment of Court once delivered on 14.5.2015.
6. The Applicant wants Court to exercise its discretion and allow the application.
7. The Respondents filed a replying affidavit to this application on 9.10.2015. The affidavit was sworn by one John Simiyu who depones that the only option the Applicants have is review as they do not have a valid reason to warrant setting aside of this Court's orders of 14.5.2015.

8. I have considered the averments of both parties. I notice one averment by Applicant that does not reflect the true position of what transpired on 11.5.2015. On this day, Counsel for Applicant failed to attend Court yet again and one Odogo who was holding his brief stated that he was engaged in a strike dispute in Naivasha and so was not ready to proceed. The Court then decided to proceed and deliver its Judgment as the Applicant who seemed aggrieved though having a chance to prosecute his application opted to attend to other matter.
9. It is true Court has discretion to grant orders sought but these must be given judiciously. From the proceedings, the Applicants have abused this Court process. They have not obeyed the orders of Court given in its judgment on 14/5/2015.
10. There are no orders of stay to the said orders. The Applicants cannot seem to come this late to prosecute their application filed in May 2015 without obeying the Court's previous orders.
11. It is my finding that Applicants are obstructing justice and deliberately delaying implementation of this Court's orders. I therefore find the application has no merit and I dismiss it accordingly.

**Read in open Court this 27<sup>th</sup> day of January, 2016.**

**HON. LADY JUSTICE HELLEN WASILWA**

**JUDGE**

**In the presence of:**

Kimathi for Respondents – Present

SR. Immaculate Muthoni holding brief for John Simiyu for Claimant - Present