



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO 278 OF 2014

ELIJAH OUMA OTIENO.....CLAIMANT

VS

BHACHU INDUSTRIES LIMITED.....RESPONDENT

RULING

1. This ruling relates to the Respondent's application brought by Notice of Motion dated 28th September and filed in Court on 29th September 2015. The application which is supported by the affidavit of Bryan A. Moturi sworn on 28th September 2015 is based on the following grounds:

- a. That on 28th July, the Advocate on record for the Respondent went to court at 9.00 am but the court (Abuodha J) had not begun. He therefore went to another court (Nduma J) to prosecute ELRC No 1535 of 2013;
- b. That after he finished prosecuting ELRC No 1535 of 2013, the Advocate went before Abuodha J only to find that the application had been dismissed;
- c. That the application has merit and ought to be heard;
- d. That the mistake of the Advocate should not be visited on the Respondent.

2. In reply, Mr. Agina for the Claimant pointed out that the Respondent had not told the Court the prejudice it would suffer if the application dated 7th July 2015 is not reinstated. In addition, no reason was given as to why Counsel failed to get a colleague to hold his brief when the application came up for hearing on 28th July 2015.

3. I have looked at the court record and note that the hearing date of 28th July 2015 was obtained by Counsel for the Respondent when he appeared before the Duty Judge under certificate of urgency on 9th July 2015. Having taken the date *ex parte*, Counsel for the Respondent was under a duty to appear before the Court on 28th July 2015. It is not enough to simply say that he was prosecuting another matter.

4. An Advocate who fixes multiple matters on the same day has an obligation to manage their diary. There was no reason why Counsel did not get a colleague to hold his brief. The Court therefore finds that no sufficient grounds have been laid for setting aside the orders issued by Abuodha J on 28th July 2015. In arriving at this decision, I have taken into account that the Respondent retains his right to be heard in the main claim which is still pending in court.

5. The result is that the Respondent's application dated 28th September 2015 is dismissed with costs being in the cause.

6. Orders accordingly.

**DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS
26TH DAY OF FEBRUARY 2016**

LINNET NDOLO

JUDGE

Appearance:

Mr. Agina for the Claimant

Mr. Moturi for the Respondent