



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT NAIROBI**

**CAUSE NUMBER 1420 OF 2014**

**PAUL KIARIE MUIRURI.....CLAIMANT**

**VERSUS**

**WIDRUPS GROUP LIMITED.....RESPONDENT**

**RULING**

1. By a motion dated 1<sup>st</sup> September, 2015, the respondent, seeks stay of execution of ex parte judgment entered on 22<sup>nd</sup> July, 2015 and that the respondent be granted unconditional leave to defend the claim.
2. The application is based on the grounds among others that the summons were never served on the judgment debtor hence no appearance or defence could be filed. Further that the decree holder had obtained warrants of attachment and sale of the respondent's property and the same had been proclaimed. The respondent further stated it had defence to the claim and should be heard on merit. The application was supported by the affidavit of one James Rapando who deponed further on the grounds upon which the application was brought.
3. The claimant opposed the application insisting the respondent was duly served.
4. The considerations for grant of stay of execution are substantially contained in order 42 rule 6 of Civil Procedure Rules which by extension apply to execution of decrees issued by this Court. The order provides in paraphrase that no order of stay shall be made unless (a) the Court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay and such security as the Court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.
5. The Court proceeded to hear this matter ex parte after being reasonably persuaded that there was proper service. The summons to enter appearance were received and duly stamped by the respondent. They however now claim the stamp was a forgery. The Court will not delve further in this aspect.
6. The Judgment of this Court was for Kshs.1,465,462 together with costs. The respondent has not stated that if it pays the decretal sum the substantial loss will occur. All the respondent said is that if the ex parte hearing is not set aside it will have been condemned unheard.
7. The right to be heard is fundamental principle of natural justice. The Court encourages trial inter partes since a decision reached after hearing both parties is more sustainable than an ex parte judgment. The Court will however hear and conclude a matter ex parte where it is convinced that service was

properly effected and the defendant has ignored or omitted to enter appearance or file a defence. A retrial is double work for the Court hence should only be ordered in cases where it is clear that the respondent was not served and further that the respondent has triable defence to the claim.

8. The Court has considered the draft defence annexed to the application and is reasonably persuaded that issues raised are triable. On the issue of service there is shadow of doubt in the mind of the Court that service was not done as claimed by the respondent.

9. As required by Order 42 rule 6 of the Civil Procedure Rules, the court will grant a conditional stay and setting aside to the effect that the respondent deposits in Court the decretal sum within 21 days from todays date in default execution shall proceed.

10. It is so ordered.

Dated at Nairobi this 1<sup>st</sup> day of April 2016

Abuodha J. N.

Judge

Delivered this 1<sup>st</sup> day of April 2016

**In the presence of:-**

.....for the Claimant and

.....for the Respondent.

Abuodha J. N.

Judge