



REPUBLIC OF KENYA
IN THE EMPLOYMENT & LABOUR RELATIONS
COURT AT MOMBASA
CAUSE NUMBER 237B OF 2014

BETWEEN

ANDREW MWONGELA.....CLAIMANT

VERSUS

MBUKONI LOGISTICS LIMITED.....RESPONDENT

RULING

1. In its Award delivered on 27th February 2015, the Court ordered the Respondent to pay the Claimant a total of Kshs. 376,679 in service pay, annual leave pay, and overtime pay. It was ordered also, that the Respondent releases to the Claimant his Certificate of Service, and meets the costs of the Claim.
2. The Respondent lodged a Notice of Appeal on 12th March 2015, and applied for copies of proceedings on 9th March 2015.
3. The written transcripts on record are quite brief. The actual hearing comprises the evidence of the Claimant which is to be found on a single page. Yet, the Respondent has not, in 1½ years obtained copies of proceedings, and processed the intended Appeal. The Award itself was delivered in a printed form. There can be no reason why the Appeal has not been processed 1½ years after the Award was released to the Parties.
4. Instead of pursuing its Appeal, the Respondent returned to the trial Court, in an Application dated 4th May 2016, asking the Court to review the Award, and allow the Respondent to respond to the Claim.
5. The Application was heard on the 11th July 2016. The Respondent argues its failure to participate in the main hearing, was caused by its Advocates. The mistake of Counsel, should not result in punishment for the client. The Claimant's position is that there was no ground for Respondent's failure to attend Court at the Main hearing. The Application has been brought after an inordinate delay.

The Court Finds:-

6. It has not been shown by the Respondent why the Court should revisit its Award.
7. The Application for review, coming in excess of 1 year after the Award was delivered, has been presented after an inordinate delay.

8. It can be faulted in equal measure, for technical defects. It seeks to have review of Judgment entered on 2nd February, 2015. On record is an Award delivered on 27th February 2015. Even when this error was brought to the attention of the Respondent at the hearing of the Application, there was no attempt to correct. Secondly, the Application is made entirely under the Civil Procedure Rules. It was not explained to the Court by the Respondent why this is so. This Court has its own procedural law, and the Civil Procedure Rules can only be invoked in accordance with that procedural law. The review jurisdiction of this Court is not exercised in accordance with the Civil Procedure Rules.

9. The record is clear that on the hearing of the substantive Claim, the Advocate for the Respondent came to Court in his weekend attire. The Claimant's Advocate addressed the Court on his behalf. Time was given by the Court to Respondent's Advocate to wear proper attire. The Court waited up to 11.00 am, and neither the Respondent, nor its Advocate appeared for the hearing.

10. The argument that the Respondent was not given a chance to present its case, is incorrect, and unacceptable. It would be against the Claimant's right to fair and expeditious hearing, to order the reopening of the Respondent's Case.

11. At paragraph 4 of the award, the Court noted that although the Respondent did not attend Court for the hearing, there was on record a Statement of Response, which the Court was obliged to take into account. The Respondent's position was considered, based on the Pleadings, in the absence of the Respondent. It is not entirely correct that the Respondent was denied the right to state its case through such absence.

12. ***The Application dated 4th May 2016 is rejected, with costs to the Claimant.***

Dated and delivered at Mombasa this 18th day of July 2016.

James Rika

Judge