



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
CAUSE NO. 554 OF 2014

CHRISTOPHER KIPSANG BIWOTT

CLAIMANT

v

EMROCK INVESTMENT TEA FACTORY LTD

RESPONDENT

RULING

1. This Cause was heard on 10 March 2016 in the absence of the Respondent and/or his legal counsel.
2. The hearing date was fixed on 12 November 2015 and the Claimant was directed to serve a hearing notice upon the Respondent.
3. Before permitting the hearing to proceed, the Court satisfied itself that a hearing notice had been served (there was an affidavit of service on record).
4. After the close of the Claimant's case, the Court reserved judgment for 29 July 2016, but on 30 March 2016, the Respondent filed an application to set aside the *ex parte* proceedings (hearing).
5. The Respondent's application was urged on 6 September 2016 and is the subject of this ruling.
6. The principal reason advanced by the Respondent is that its counsel forgot to diarise the hearing date, and it was urged that there was a good defence and therefore the Respondent ought to be given the opportunity to ventilate its case.
7. The Claimant in a replying affidavit filed in Court on 19 April 2016 asserted that apart from serving a hearing notice upon the Respondent on 6 December 2015, other hearing notices had been served upon the Respondent, but it had not bothered to attend Court.
8. The Court has gone through the record.
9. The first hearing of the Cause was scheduled for 12 November 2015. The Respondent was not represented on that date though its advocate on record had been served with a hearing notice as attested to the affidavit of service by one Margaret Nambala Wafula.
10. However, the Cause could not be reached for hearing, which was rescheduled to 10 March 2016.
11. Come 10 March 2016, when the Cause was called out the Respondent and its counsel were not present and because the Claimant was ready to proceed, the Court directed the filing of an affidavit of

service which was done.

12. According to the affidavit of service, the Respondent's advocate had acknowledged service of the hearing notice.

13. Without an explanation as to why there was no representation when the hearing was first scheduled, the Court is not satisfied that the reason advanced by the Respondent for failure to attend the rescheduled hearing merits an exercise of the Court's discretion in its favour.

14. The upshot of the foregoing is that the motion dated 23 March 2016 is dismissed with costs to the Claimant.

15. Judgment will be delivered on 11 November 2016.

Delivered, dated and signed in Nakuru on this 30th day of September 2016.

Radido Stephen

Judge

Appearances

For Claimant

Ms. Morande instructed by Chepkwony and Co. Advocates

For Respondent

Mr. Biko instructed by S.K. Kitur & Co. Advocates

Court Assistant

Nixon