



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU

CAUSE NO. 524 OF 2014

HARON CHEBOR ROTICH.....CLAIMANT

VERSES

SECRETARY, PUBLIC SERVICE BOARD BARINGO.....1ST RESPONDENT

COUNTY GOVERNMENT OF BARINGO.....2ND RESPONDENT

RULING

1. In a judgment delivered on 8 April 2016, the Court ordered the reinstatement of the Claimant into the 2nd Respondent's service with effect from January 2014 without loss of benefits.
2. The hearing had proceeded on 8 December 2015 without the participation of the Respondents.
3. As noted in paragraph 7 of the judgment, the Respondents advocate then on record J.J. Chesaro & Co. Advocates had acknowledged service of the hearing notice.
4. On 25 May 2016, the Respondents moved Court (sitting in Kericho) under certificate of urgency seeking stay of execution of the decree; the setting aside of the *ex parte* judgment and grant of leave to amend the Defence.
5. Marete J who heard the application *ex parte* granted interim order of stay pending *inter partes* hearing.
6. The Claimant filed a preliminary objection and replying affidavit to the application on 14 June 2016 and the same prompted the Respondents to file a Supplementary Affidavit on 21 June 2016.
7. The preliminary objection and motion were taken on 26 July 2016.
8. Some of the grounds advanced by the Respondents in seeking stay of execution of decree, setting aside of the judgment are that, *the advocates then on record did not inform them of the hearing or attend the hearing; that the Respondents should not be punished for the mistakes committed by their advocate; that they have a good defence; interests of justice require a party be given a chance to be heard and that the Claimant would suffer no prejudice.*
9. The Court will examine each of the grounds
Failure to attend hearing/Inform Respondents of hearing date
10. The Respondents advocate on record at the material time was served with a hearing notice and the

same was duly acknowledged.

11. As to whether the Advocate informed the Respondents of the hearing date, without an affidavit from the advocates, it would not be possible for the Court to make determination.

12. On the failure by the advocate on record at the material time to attend the hearing on 8 December 2015, there is absolutely no explanation.

13. Failure of an advocate with instructions to attend Court or to keep a client upraised of litigation is such a serious professional issue that were the Respondents serious in the allegations, they ought to have disclosed what follow up they have made.

Punishment for mistake of advocate

14. When a Court delivers judgment against a party who has been afforded an opportunity to appear in Court and defend itself through its advocate, it cannot be said that the party has been punished for the mistakes of the Advocate

15. Where a party is represented by an advocate, the traditions, customs and practices of the Court are that it is the advocate who is served with Court process.

16. In the instant case, there is no iota of explanation from the firm then on record for failing to attend Court to advance the interests of the Respondents.

Good defence

17. The Respondents in advancing this ground are clearly of the view that Courts act like robots without a care for the record.

18. The purported draft defence annexed to the application is a clone, nay exact replica of the Response which is on record and was filed on 24 December 2014.

19. This attempt only demonstrates the callousness and sloppiness of the Respondents.

Interests of justice

20. The Respondents were afforded an opportunity to appear in Court for the hearing, but for reasons best known to themselves and their then counsel, failed to attend the hearing and therefore it cannot come from their mouth that the interest of justice requires the reopening of the hearing.

21. The interest of justice cannot be a basis for helping an indolent party who decided to sleep on its right (opportunity to advance ones case at hearing).

22. It is equally telling that the firm of J J Chesaro & Co. Advocates moved with speed to sign a consent to allow the firm of Limo R.K & Co. Advocates to come on record only after the Claimant had raised the issue as a preliminary issue, but failed to file any affidavit to explain the failure to attend the hearing on 8 December 2015.

23. While it is not the duty of a Court of law to advice litigants, there is plenty in the instant case that may amount to professional negligence.

24. The upshot of the foregoing is that the Court finds no merit in the Respondents application dated 24 May 2016 and the Court orders that it be dismissed with costs to the Claimant.

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

Radido Stephen

Judge

Appearances

For Claimant Ms. Tana instructed by Tarus & Co. Advocates

For Respondent Mr. Opar instructed by Limo R. K & Co. Advocates

Court Assistant Nixon