



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAKURU

CAUSE NO. 403 OF 2014

GEOFFREY RONO.....CLAIMANT

v

NAKURU COUNTY AP COMMANDER.....1ST RESPONDENT

INSPECTOR GENERAL OF POLICE.....2ND RESPONDENT

HON. ATTORNEY GENERAL.....3RD RESPONDENT

RULING

1. On 28 May 2015, this Cause was fixed for hearing on 19 November 2015 in the presence of Ms. Kibiriu representing the Claimant and Mr. Kirui representing the Respondents.
2. However, when the Cause was called out for hearing on 19 November 2015, the Respondents were not present. They were also not represented.
3. The Court being satisfied that the hearing date had been fixed in the presence of the Respondents' legal representative allowed the hearing to proceed.
4. The Claimant testified and the Court reserved judgment for 18 March 2016.
5. The Respondents however moved Court through a certificate of urgency on 10 March 2016 seeking
 1.
 2. *That there be a stay of further proceedings and delivery of judgment pending the hearing and determination of this application.*
 3. *That the judgment to be delivered on 18th March 2016, be stayed and this suit to proceed for defence hearing.*
 4. *That costs of this application be in the cause.*
6. The Court certified the motion urgent and directed that it be served upon the Claimant for *inters partes* hearing on 21 March 2016, but it did not take off until 7 September 2016.

7. The reason advanced by the Respondents' counsel for not attending Court on 19 November 2015 are that the counsel who had the brief had proceeded on leave and requested a colleague to hold fort, but the said colleague inadvertently failed to include the hearing date in his diary.

8. The Respondents urged that the mistake of an advocate ought not to be visited upon the client and therefore the dictates of justice tilted in favour of the Court exercising its discretion to allow the Respondents case to be heard on the merits.

9. The Claimant, in a replying affidavit filed in Court on 18 March 2016 asserted that the application was misconceived, incompetent and bad in law because there was no provision in law providing for stay of delivery of judgment; that there were no pending proceedings to be stayed.

10. The Claimant also opposed the application on the ground that it had been brought 4 months after close of hearing without proper explanation for the delay.

11. The Claimant sought umbrage under Rule 25(2) of this Court's Rules and the decisions in *Kamunyi v Macharia & Ar* (1990) KLR 470 and *Governors Balloon Safaris Ltd v Attorney General & 2 other* (2015) eKLR.

12. The Court has given due consideration to the papers filed, oral submissions made in Court and case law cited.

13. The Respondents are attempting through the instant application to arrest a decision of the Court before it is delivered.

14. It is true that there are no specific statutory provisions empowering the Court to grant the orders sought by the Respondents, but that does not mean that the Court is powerless to grant appropriate relief as the dictates of justice demand, in exercise of its inherent jurisdiction.

15. In other words, the inherent jurisdiction of Court or the reality that a court is a court of law, justice and equity permits it, depending on the requirements of the case, to do substantial justice.

16. The Court is of course alive to the fact that the Respondents would still have had other options anchored in procedural law available to them, to seek to set aside or review the judgment of Court after delivery.

17. In exercise of that inherent jurisdiction and in order to do substantial justice, the Court allows the application by the Respondents on the following conditions

(a) Respondents file and serve witness statements before 30 September 2016.

(b) In default of compliance with (a) above, the application will stand dismissed and judgment will be prepared and delivered appropriately.

(c) Agreed Issues to be filed before 14 October 2016 and if issues are not agreed, Claimant to file his proposed issues before 21 October 2016.

(b) Respondents pay Claimant's thrown away costs assessed by Court as Kshs 25,000/- before hearing date.

18. The Court further orders that the Cause be mentioned on 24 October 2016 for further directions.

Delivered, dated and signed in Nakuru on this 23rd day of September 2016.

Radido Stephen

Judge

Appearances

For Claimant Mr. Kanyi instructed by Kanyi Ngure & Co. Advocates

For Respondents Mr. Nguyo, Senior Litigation Counsel, Office of the Attorney General

Court Assistant Nixon