



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT
AT MOMBASA
INDUSTRIAL CAUSE NO. 179 OF 2013

BETWEEN

EUNICE MWANYALO..... CLAIMANT

VERSUS

KIPROP BUNDOTICH

PAUL MAIYO

NINESH PANDYA

(Sued as Chair, Secretary and Treasurer respectively of the

KENYA TRANSPORTERS ASSOCIATION sued on their behalf

and on behalf of members of the Association)RESPONDENTS

RULING

1. Award of this Court was delivered on 27.2.2015, directing the Respondent to pay to the Claimant a total of US Dollars 26,500. This is over 1 year ago.
2. The Respondent filed an application dated 2nd September 2016, seeking to vary terms of payment agreed to between the Parties, so that payment would commence January 2017.
3. This application came up for hearing on 22nd September 2016. The Respondent and their Advocates were not in Court, and the Claimant's Advocate applied to have the application dismissed. The Court granted the order of dismissal.
4. The Respondent filed the application dated 22nd September 2016, seeking to have the application of 2nd September 2016 reinstated.
5. Mr. Omari for the Respondent explains that on the 22nd September 2016, he was held up at the High Court, and instructed Mr. Ratemo to hold his brief. Mr. Ratemo was held up in traffic and failed to hold brief. The dismissed application raised fundamental issues, and the Respondent should not be condemned

unheard.

6. Mr. Asewe answers that the details of the High Court case, which led to Mr. Omari's absence, have not been given. There is no affidavit sworn by Mr. Ratemo. The application is meant to delay execution.

7. The Court notes it is well over 1 year since Award was delivered. The Award remains unsatisfied, and the Respondent seeks to commence payments in January 2017.

8. The current application is meant to afford the Respondent time, in meeting the full award. There is no evidence shown that Mr. Omari was held up at the High Court, or that he instructed Mr. Ratemo to hold his brief here. The application was brought under Certificate of Urgency. Mr. Omari should have been present here to prosecute the application given the urgency. The application has no merit.

IT IS ORDERED:-

a) Application dated 22.9.2016 is dismissed with costs to the Claimant.

Dated and delivered at Mombasa this 14th day of October 2016.

James Rika

Judge