



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
CAUSE NO. 58 OF 2013

ISAAC OKOTH MARAMWA

CLAIMANT

v

LOCHAB BROTHERS LIMITED

RESPONDENT

RULING

1. Isaac Okoth Maramwa (Claimant) sued Lochab Brothers Ltd (Respondent) on 7 March 2013 alleging unlawful termination of employment, and the Respondent filed its Response on 26 March 2013.
2. On 24 April 2013, the Claimant filed an Amended Memorandum of Claim.
3. After hearing wherein oral testimony was led, the Court delivered a judgment on 12 July 2013, in which the termination of the Claimant's employment was declared to have been unfair and he was awarded Kshs 232,887/38.
4. The Respondent was aggrieved with the judgment, and it filed an application for review of the same.
5. In a ruling rendered on 15 November 2013, the Court dismissed the review application with costs.
6. Feeling further aggrieved, the Respondent moved Court on 21 November 2013, seeking stay of execution pending hearing of an appeal.
7. The motion was not canvassed on the merits as the parties informed the Court on 9 December 2013 that they had consented to a stay pending appeal on condition that the decretal sum be deposited into a joint interest earning account in the names of the advocates on record.
8. The matter seems to have gone to sleep for it was not until 17 August 2016 that the Claimant applied to Court seeking the orders
 - a) *That the Notice of Appeal dated 20th November, 2013 be struck out with cost to the Respondent.*
 - b) *That the amount deposited in a joint interest earning Account of both counsels by the court order of 9/12/2013 be released to the claimant/Applicant forthwith.*
9. The application was stated to be anchored on Order 45 Rule 1 & 2 of the Civil Procedure Rules.
10. The motion was served upon the Respondent on 17 August 2016, but it was received under protest.

11. When the motion came up for hearing on 19 September 2016, the Respondent sought an adjournment on the ground that the person who ought to have sworn a replying affidavit had been away on official duties.

12. The Court declined to grant the adjournment because the identity of the proposed person who was away on official duties was not disclosed. Such disclosure, in the view of the Court was necessary in order for the Court to consider whether to exercise its discretion judiciously, fairly and reasonably.

13. After going through the Cause list and when the motion was called out for hearing at 10.50am, the counsel who had held brief on behalf of the Respondent had left without informing the Court where she was going. Such conduct is regrettable.

14. Mr. Bichanga representing the Claimant made oral submissions to buttress the grounds set on the face of the motion and the supporting affidavit.

15. The order and rules set out by the Claimant relate to an application for review before the High Court and do not apply in an application such as the one now before this Court.

16. It is correct that a Notice of Appeal was lodged with the Court on 21 November 2013 outside the prescribed period because the judgment was delivered on 12 July 2013.

17. There is also nothing on record to indicate whether the Respondent sought and got leave either from this Court or the Court of Appeal to extend the time allowed for filing the Notice of Appeal.

18. It is now nearly 3 years after the judgment sought to be appealed against was delivered, but it is doubtful in my mind whether this Court has the legal power to strike out a Notice of Appeal filed outside the prescribed period and where no leave has been granted.

19. However, this Court can take judicial notice of the status of its record and determine whether a party is guilty of delays which amount to abuse of court process.

20. The circumstances obtaining here demonstrate that the Respondent has not been diligent as the record even indicate proceedings have been ready for collection from 1 July 2014 when the Respondent's advocate was informed in writing.

21. In the event, the Court agrees that order b) of the motion dated 16 August 2016 is merited and the Court orders that the amount deposited in the joint interest earning account in the names of the advocates on record be released forthwith to the Claimant's advocate.

22. Claimant to have costs of this motion.

Delivered, dated and signed in Nakuru on this 14th day of October 2016.

Radido Stephen

Judge

Appearances

For Claimant

Mr. Bichanga instructed by Chepkwony & Co. Advocates

For Respondent

Ms. Momanyi instructed by Mongeri & Co. Advocates

