



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
CAUSE NO. 511 OF 2014

EVANS KAMANDA KIVOCHI

CLAIMANT

v

ELDORET MATTRESSES LTD

RESPONDENT

RULING NO. 2

1. The Court delivered a ruling on 3 May 2016 in which the Claimant was ordered to pay the Respondent Kshs 15,000/- as costs within 30 days. The ruling was occasioned by an application by the Claimant seeking warrants of arrest to be issued against a director of the Respondent on the allegation that the Respondent intended to wind up its operations in Kenya and that the 2nd Respondent intended to leave the jurisdiction (in actual fact there was no second Respondent and the named director was not a party to the Cause).
2. The Court had earlier, before the ruling directed that the Cause be heard on 26 September 2016.
3. When the Cause was called out for hearing on the scheduled date, Mr. Bichanga informed the Court that the advocates on record had agreed to have the matter taken out of the hearing list and that the Claimant had failed to pay the costs as directed.
4. Mr. Othuro for the Respondent on his part indicated that he was ready with 1 witness for the hearing, and on the purported agreement to take the Cause out of the hearing list stated that indeed Mr. Chepkwony had called him the previous day, but that he did not concede to the request for adjournment.
5. The Court reserved its ruling to today.
6. Parties cannot agree among themselves to take out a matter out of the hearing cause list. Any such agreement must have the imprimatur of the Court.
7. And for the Court to accede to such extra judicial agreements, sufficient cause must be demonstrated.
8. In this respect, any party who assumes that the Court would accede to an agreement to take out a matter must be put on notice that he (she) must be ready to proceed if necessary.
9. Litigants should not expect to run a Court's diary at their convenience. Any adjournment must be justified by putting sufficient reasons before the Court, and where the reasons are not convincing, an adjournment would be declined.
10. In the case at hand, the Claimant failed to comply with a peremptory Court order but instead of moving Court earlier to seek indulgence or extension of time to comply, waited until the hearing date.

11. That is unfortunate because Court orders are meant to be complied with at the earliest opportunity.
12. As it is, the Claimant was not ready for the hearing and the Cause ought to have been dismissed, but in the interest of justice, the Court will extend the time to comply with the order on costs.
13. The Claimant is therefore ordered to pay the said costs on or before 30 December 2016 and on failure to comply, this Cause shall stand dismissed.

Delivered, dated and signed in Nakuru on this 2nd day of November 2016.

Radido Stephen

Judge

Appearances

For Claimant Mr. Bichanga instructed by Chepkwony & Co. Advocates

For Respondent Mr. Othuro instructed by Gicheru & Co. Advocates

Court Assistant Nixon