



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

CAUSE NUMBER 1212 OF 2013

JUDY W. MUNYINYI.....CLAIMANT

VERSUS

TBN FAMILY MEDIA LIMITED.....RESPONDENT

RULING

1. This matter was heard by Hon. Justice Rika and he wrote his judgment which for the reason of his transfer to Mombasa he sent the judgment to me which I read on 7th November, 2014.
2. The history of this matter was as minuted in the Court file is as follows:-

On 7th February 2014, this matter was fixed ex-parte for hearing on 7th April, 2014. The hearing notice was served on the respondent's counsel on 17th February, 2014 and an affidavit of service in that regard was filed.
3. On 7th April, 2014 the matter came up for hearing and only the claimant's counsel appeared. The matter proceeded ex-parte and only the claimant gave evidence and the learned Judge ordered that submissions be filed on 28th May, 2015. There appeared thereafter to have been a time lag until 31st July, 2014 when the matter was fixed for mention on 16th September, 2014. The respondent was served with the mention notice on 10th September, 2014 and an affidavit of service to that effect filed. Once again only the claimant appeared on 16th September, 2014 when the matter was called. The learned Judge then stood over the matter generally.
4. On 30th September, 2014, Counsel for the claimant caused the matter to be listed for mention once more on 14th October, 2014. The notice of mention was once more served on the respondent's counsel's offices and received by one Caroline Mwangia.
5. On 14th October, 2014 the matter came up for mention before Justice Nderi and this time again only counsel for the claimant was present. The learned Judge ordered that since the matter had been heard and concluded by Justice Rika the file be sent to him to Mombasa where he had proceeded on transfer to write the judgment.
6. The learned Judge wrote the judgment and by a letter dated 23rd October, 2014 and copied to the parties, the Deputy Registrar of the Court of Mombasa informed all concerned that Justice Rika had prepared the judgment and forwarded the same to Nairobi to be delivered by me.

7. By a letter dated 30th October, 2014 the Deputy Registrar of the Court informed the parties that the judgment would be delivered on 7th November, 2014 before my Court. This was duly done.
8. The application before me is dated 26th November, 2014 and filed on the same date. This was some nineteen days after the delivery of the judgment.
9. The application was brought on the grounds that on 14th October, 2014 the respondent's advocate failed to attend Court on 14th October, 2014 due to being served under short notice.
10. Counsel further deponed that on 7th April, 2014 he did not attend Court because he was indisposed.
11. I have hereinbefore endeavoured to document in this ruling the happenings in this matter. What is revealed is the respondent's counsel's negligent and dilatoriness in attending to this matter.
12. To fail to attend Court simply because the notice given is short is to take for granted the Court process and borders on disrespect to the Court. Counsel may have had a more important engagement than this matter but professional duty to his client behoved him to make arrangements to be represented in Court even under protest and request for a more convenient date. On the issue of being indisposed, courtesy from the bar and which I learned during my years in practice taught me never to question an allegation that a colleague is unwell since failure in health at times may be sudden and unexpected. However professional courtesy demands of such counsel to inform his colleague of the unwellness and possibly instruct another colleague to hold their brief and inform the Court. This never happened in this matter.
13. As reviewed above in this ruling every attempt was made to inform the respondent's counsel of the activities in this matter but in all occasions save for the present application he chose to ignore such information.
14. Whereas it is conceded that this applicant has a constitutional right to be heard such right is not absolute. It must be exercised within the parameters set by the Court. In the matter before me, Counsel has demonstrated total disregard to notices issued both by his colleague and the Court with respect to this matter.
15. Setting aside judgment is discretionary since it means reopening concluded a case hence adding to the case load before the Court. The discretion must therefore be exercised in a proper case. Unfortunately this is not such a case with the consequence that the Court declines to set aside the judgment of Justice Rika delivered on 7th November, 2014. This application is hereby dismissed with costs.
16. It is so ordered.

Dated at Nairobi this 20th day of February 2015

Abuodha J. N.

Judge

Delivered this 20th day of February 2015

In the presence of:-

.....for the Claimant and

.....for the Respondent.

Abuodha J. N.

Judge