



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT AT MOMBASA
CAUSE NUMBER 556 OF 2014

BETWEEN

MOSES SAMMY PONDA CLAIMANT

VERSUS

IMARIKA SACCORESPONDENT

Rika J

Court Assistant: Benjamin Kombe

Mr. Mwanyale Advocate instructed by Mwanyale & Kahindi Advocates for the Claimant

Mr. Bwire Advocate instructed by Kithi & Company Advocates for the Respondent

RULING

1. The Claimant filed an application dated 4th November 2014, seeking to be reinstated to his position of the Procurement Officer, pending hearing of the full Claim for unfair termination. The Court declined to issue the Claimant *ex parte* reinstatement, and directed the application to be served upon the Respondent; the Respondent to file its Reply; and hearing in the presence of both Parties to take place on 14th November 2014.
2. The Respondent filed nothing and did not show up in Court, although served with the application and the procedural orders of 4th November 2014. The Claimant proceeded *ex parte*.
3. The Court made a ruling dated 9th December 2014, allowing the application dated 4th November 2014. It was pointed out that ordinarily, the Court does not grant orders for interim reinstatement, but in the absence of any affidavit or grounds of opposition from the Employer, such orders can be granted.
4. The Respondent then filed an application dated 24th November 2014, seeking to set aside the proceedings of 14th November 2014 and all the consequential orders. This was alleged by the Respondent to be based on the following reasons:

- a. Failure to attend Court on 14th November 2014 was through the inadvertence of the Respondent's Advocates;
- b. The Replying Affidavit by the Respondent raises fundamental issues which should go to trial;
- c. The Claimant did not make full disclosure in making his application for interim reinstatement; and
- d. There was no delay in lodging the present application

5. The Parties' Advocates agreed to have the application considered and disposed of on the strength of the affidavits, pleadings, documents and submissions on record.

6. The Court finds:-

- a. The failure by the Respondent's Advocates to attend Court on 14th November 2014, or file the Replying Affidavit or Grounds of Opposition, was not through inadvertence; it was inaction rather than inadvertence on the part of the Respondent's Advocate;
- b. The Memorandum of Appearance is dated 17th November 2014, and filed on 20th November 2014. It is misleading for the Respondent to allege the Memorandum of Appearance was ready for filing on 14th November 2014;
- c. The Respondent was served with the Summons to Enter Appearance, Notice of Motion, and Order dated 6th November 2014, indicating hearing *inter partes* would be on 14th November 2014; and
- d. All these facts point to inaction rather than mere inadvertence on the part of the Respondent.

7. It is ordered:-

- a. ***The application by the Respondent dated 24th November 2014 is rejected.***
- b. ***The orders arising out of the proceedings of 14th November 2014 shall remain in force.***
- c. ***Parties to schedule the main Claim for hearing on an accelerated basis.***

Dated and delivered at Mombasa this 13th day of March 2015

James Rika

Judge