



REPUBLIC OF KENYA

EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA

CAUSE NO. 753 OF 2013

KENNEDY OMONDI AKOKO..... CLAIMANT

VERSUS

RAFIKI FOUNDATION..... RESPONDENT

Mr Wakiaga for Respondent/Applicant

Claimant/Respondent in person

RULING

1. Application dated 16th April, 2015, seeks the court to set aside the ex-parte proceedings in the suit as well as the Judgment and the bill of cost.
2. That the Respondent be given unconditional leave to defend the suit.
3. The Application is based on the grounds set out on the face of the Notice of Motion to witi.
4. The Claimant/Respondent served the Respondent/Applicant with copies of the court proceedings too late and she was not given a chance and time to file relevant documents in reply and to defend herself.
5. The Respondent was denied a right to be heard in the circumstances of the case.
6. The Application is opposed by the Claimant/Respondent vide a replying affidavit sworn on 22nd April, 2015.
7. The Claimant/Respondent details particulars of service of summons and other court proceedings.
8. In particular on 8th October, 2014, the court directed that the summons and memorandum of claim be served through a process server. An Affidavit of Service sworn on 4th December, 2014 by a Court Process Server Mr Bashir Mumbaha was filed on 5th December, 2014.
9. The Process Server deposes that on 26th November, 2014 he received a hearing notice dated 20th November, 2014, summons dated 20th November, 2014 and memorandum of claim dated 20th May, 2013 from the Claimant with instructions to serve the same on the Respondent.

10. That he proceeded to the Respondent's premises at Casino, former resident of the late President Kenyatta next to Kenya quarry along Njiru Mwiki Road.
11. That upon arrival he went to the gate of the Respondent and explained the purpose of the visit to the guard with the aim to be let in to serve the documents but the guard refused him entry stating that he had no appointment with management.
12. That the Process Server served the guard with the stated documents and requested that she signs his principal copies which she declined.
13. It is the Claimant's submissions that the Applicant did not show any interest in the suit inspite of being aware of it since the year 2013 to-date.
14. That the Applicant is out to frustrate the court process and deny the Claimant justice.
15. That the supporting affidavit of Mr Wakiaga Peter Semekia Advocate for the Applicant lacks merit and this application be dismissed with costs.

Determination

17. The averment by the Applicant that it was served with the court processes too late is not born out of any facts. Initially, court documents were served vide registered mail after the Claimant was denied entry to the premises.
18. The Court intervened and directed that the Applicant be served by a process server and this happened on 26th November, 2014, which fact is common cause.
19. The hearing of the suit was set for this 8th December, 2014.
20. In spite of service, the applicant did not enter appearance nor file a defence in the suit. The applicant was in deliberate default of entering appearance and attending the hearing of the suit.
21. Indeed, the conduct by the Applicant described by the Claimant which the court finds to be truthful is consistent with conduct aimed at frustrating its ex-employee and defeating the ends of justice.
22. Accordingly, no reasonable grounds have been advanced by the Applicant to warrant this court to set aside the proceedings and judgment delivered on 6th March, 2015.
23. The Application is dismissed with costs.

Dated and Delivered at Nairobi this 29th Day of May 2015

MATHEWS N. NDUMA

PRINCIPAL JUDGE