



**REPUBLIC OF KENYA**  
**EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA**

**AT NAIROBI**

**CAUSE NO. 354 OF 2015**

**(Before Hon. Justice Hellen S. Wasilwa on 9<sup>th</sup> June, 2015)**

**KUDHEIHA WORKERS.....APPLICANT**

**VERSUS**

**EASTLEIGH HIGH SCHOOL.....RESPONDENT**

**RULING**

1. The application before this court is the one dated 15/4/2015. The application was filed under Certificate of Urgency and brought through a Notice of Memorandum filed under Rule 16 and 32 (1) (e) of the Industrial Court (Procedure) Rules 2010 and Section 12 (3) (iii) and 16 of the Industrial Court Act.

2. The Applicants seeks orders that:

- 1. This application be certified urgent and service thereof be dispensed with in the first instance.**
- 2. This Honourable Court be pleased to review vary and/or set aside the order herein dated 25<sup>th</sup> March 2015.**
- 3. The Claimants Notice of Motion dated 6<sup>th</sup> day of March 2015 be heard afresh inter-partes.**
- 4. The cost of this application be costs in the cause.**

3. The application is based on the following grounds:

- 1. The order in question was made ex-parte without the necessary input of the defendant.***
- 2. Failure by the defendant to attend court on 25<sup>th</sup> March 2015 was due to the regrettable but inadvertent failure of the staff who received the court documents for and on behalf of the principal of the school to diarize the matter for action.***
- 3. The defendant has, due to previous serious security breaches; contracted a private security firm to handle security issues at the defendant's school.***
- 4. The Claimant's employment was lawfully terminated and the only thing outstanding is the***

*computation and payment of their dues.*

*5. The Claimant's continued presence at the defendant's school is likely to create a breach of peace and security and this may expose the entire school community to danger.*

*6. The suit as framed is fatally defective and irredeemably incompetent for want of a cognizable legal defendant.*

*7. It's imperative in the light of the national security situation and concerns that this Honourable Court be pleased to grant this application.*

4. The application is further supported by the annexed affidavit of Fred Awuor the Principal of the Respondents herein deponed to on 15/4/2015.

5. The Applicants have averred that indeed they were served with the paper for the case coming for hearing on 25/3/2015. However the Secretary of the Respondent's Principal failed to diarise the same leading to non-attendance of court.

6. The Applicants seeks the court's indulgence to consider excusing their absence and also to review the orders given in their absence so that the application can be canvassed interpartes.

7. The Applicants also submitted that the affidavit of the Respondent is defective as it has been deponed to by a union official who cannot depone to a contested matter.

8. The Claimants opposed this application. It is their position that the Respondents cannot ask for setting aside of orders which they have refused to implement in that they have not corrected the order terminating the Grievants after service of the court order. They also state that the Respondent have blatantly refused to pay the Grievants salary since 2015. They aver that the application lacks merit and should be dismissed.

9. Having considered the submissions of both parties, it is this court's position that, all parties need to be heard as a principle of natural justice. The Applicants have satisfactorily explained their absence in court on 23/3/2015. I will therefore allow their application and grant them a window to be heard interpartes. The orders granted on 11/3/2015 to remain in force pending hearing of the application dated 6/3/2015 interpartes.

Read in open Court this 9<sup>th</sup> day of June, 2015

**HON. LADY JUSTICE HELLEN WASILWA**

**JUDGE**

**In the presence of:**

Tonge Yoya for Claimant– Present

Mungla for Respondent- Present