



REPUBLIC OF KENYA

EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA

AT NAIROBI

CAUSE NO. 2430 OF 2012

KENYA UNION OF DOMESTIC, HOTELS, EDUCATIONAL

INSITUTIONS, HOSPITALS AND

ALLIED

WORKERS (KUDHEIHA).....CLAIMANT

VERSUS

SASINI COFFEE HOUSE LIMITED.....RESPONDENT

Mr Sifuna for Respondent/Applicant

Mr Tonge Yoya for Claimant/Respondent

RULING

1. The Respondent/Applicant seeks the Honourable Court to set aside its judgement made on the 7th November 2014, together with any consequential decree, order and the proceedings thereto.
2. The Application filed on 16th December 2014, is based on the grounds set out on the face of the Notice of Motion which may be summed as follows;
3. That the Respondent's Advocates received a letter from the Respondent to which was attached an invitation notice dated 10th January 2014 for a fixing of a mention date at the Milimani Law Courts registry scheduled for 31st January 2014 at 2 p.m. That the invitation notice and the hearing notice had conflicting information as to whether the registry to be attended for fixing of the date was at Nairobi or Kisumu.
4. That on 25th September 2014, the Respondent Advocates found out that the matter was at Nairobi. That on 3rd December 2014, the Respondent's advocates received a letter enclosing a demand letter dated 1st December 2014 and the courts Judgement dated 7th November 2014.
5. That the Claimant/Respondent filed a replying affidavit in which it deposes that at all material times the Respondent was served with the mention and hearing notices in this matter.
6. In the judgement of the court delivered on 7th November 2014, the court found that

“The Respondent was duly served with the statement of claim but did not enter appearance nor was any statement of defence filed That notwithstanding, the Respondent was served with hearing notices to attend court for hearing on 11th October, 2013 and 16th July 2014 respectively. On both occasions the Respondent failed to attend the hearing. Affidavits of service were duly filed in respect thereof”,

7. This finding by the court has not been challenged at all in the Notice of Motion itself and in the supporting affidavit of Daniel Sitati Sifuna. Instead, the deponent purports to rely on an error on the hearing notice form dated 3rd February 2014 and received by the Respondent on 11th February 2014 which was an error on the face of it that Cause No 2430 of 2012 was filed at the Industrial Court at Kisumu.

8. The gist of the matter is that the Respondent has not denied receipt of the memorandum of claim dated 30th November 2012 and the summons thereof.

9. The Notice of summons states clearly that Cause No 2430 of 2012 had been filed in Industrial Court at Nairobi. The mention notice dated 4th April 2013 also indicated that the matter was to be mentioned on 16th April 2013 at Nairobi Industrial Court.

10. The hearing notice dated 26th June 2013 indicates that the matter will be heard in the Industrial Court No 5 at Nairobi.

11. These notices bear Respondent’s acknowledgement of receipt and company stamp in respect of the latter notice. The court was duly satisfied with the affidavits of service duly sworn and filed by an authorized court process server and have not been challenged by the Applicant.

12. There is no justifiable reason set forth by the Respondent/Applicant to merit this court to set aside its Judgement of 7th November 2014. The Respondent slept on its rights and the Claimant is entitled to enjoy timeously, the fruits of its judgement in favour of the grievant employee.

13. Accordingly, the Application lacks merit and is dismissed with costs to the Claimant/Respondent.

Dated and Delivered at Nairobi this 31st day of July, 2015.

MATHEWS NDERI NDUMA

PRINCIPAL JUDGE