



**REPUBLIC OF KENYA**  
**EMPLOYMENT AND LABOUR RELATIONS COURT**  
**AT NAIROBI**  
**CAUSE NO. 2145 OF 2014**

(Before Hon. Justice Hellen S. Wasilwa on 20<sup>th</sup> August, 2015)

KENYA HOTELS AND ALLIED WORKERS UNION .....CLAIMANT

VERSUS

SENTRIM KENYA LIMITED .....1<sup>ST</sup> RESPONDENT

KUDHEIHA WORKERS .....2<sup>ND</sup> RESPONDENT

**RULING**

1. The Respondents herein filed an application on 27/5/2015 seeking orders that:

*1. This Honourable Court do certify this application as urgent and dispense with service thereof in the first instance.*

*2. This Honourable Court be pleased to set aside its judgment made on 14<sup>th</sup> May 2015 together with any consequential decree, orders and/or pending thereto.*

*3. This Honourable Court be pleased to issue temporary injunction against the Claimant, its agents, employees or any person acting for the Claimant from enforcing the same award given on the 14<sup>th</sup> May 2015 and/or executing any decree there from pending the hearing and determination of this application.*

*4. This Honourable Court be pleased to grant leave to the Respondent to file its response in terms of the annexed draft statement of response and to deem the same as duly filed and serve upon the Claimant.*

2. This application was supported by the annexed affidavit of Tonge Yoya, the Respondents 1<sup>st</sup> Respondent's Legal Officer and on the grounds that:

*1. On 8<sup>th</sup> December 2014 the Claimant served the Respondent with application under Certificate of Urgency together with Memorandum of claim scheduled for inter-partes hearing on 9<sup>th</sup> December 2014.*

*2. On the said 8<sup>th</sup> December 2014 the Respondents appeared in court and requested for*

*more time to pu in response since the notice of one day was too short which request the court allowed, gave 21 days for the same and the matter was scheduled for hearing of application on 13<sup>th</sup> May 2015.*

*3. The Respondent assigned the conduct of the matter to their Legal Officer Mr. Tonge Yoya who filed and served response through a Preliminary Objection dated 9<sup>th</sup> January 2015 on 16<sup>th</sup> January 2015.*

*5. Regrettably, but quite unfortunate, when the matter came up for hearing on 13<sup>th</sup> April, 2015 Mr. Tonge Yoya was unable to attend the court since he was stuck in Kisumu due to car mechanical breakdown and subsequently a colleague Mr. Stanslus Buleti who was sent to hold the Respondents brief arrive in court when the matter was already heard ex-parte and the Claimant directed to file submissions for ex-parte judgment.*

*5. On 28<sup>th</sup> April 2015 the Respondent filed application dated 24<sup>th</sup> April 2015 seeking to set aside the direction of court and fix the matter for inter-partes hearing which application was heard on 11<sup>th</sup> May 2015 but instead of directing inter-partes hearing the court ruled that the Respondent has an option to set aside the judgment of the court once delivered on 14<sup>th</sup> May 2015.*

*6. It is therefore very clear that unless this Honourable Court exercises its discretion to intervene as prayed herein above, the Claimant is likely to enforce the judgment herein and execute against the Respondent to the detrimental of the Respondent who will suffer immense loss and as such amount to condemnation of the Respondent without affording them a chance to be heard.*

*7. The Claimant on the other hand does not stand a chance to be prejudiced should the relief sought herein be granted since whereas the Claimant may have its day in court and be heard in rebuttal, the Respondent will not have any other chance to be heard if the sought relief are not granted.*

*8. It is therefore in the interest of fairness, justice and the overriding objective of the law that relief sought herein above be granted unconditionally given the unique circumstance befalling the Respondent, as described above, but who in any event, is ready and willing to comply with such orders as the Honourable Court may deem just and expedient to make, in the circumstances.*

3. This application came up for hearing on 9/7/2015 but the Applicant Claimant raised a Preliminary Objection in respect of the application in the following terms: That the Notice of Motion is defective, overtaken by events and cannot lie in this court and should be dismissed with costs.
4. In their application, the Applicants had asked this court to set aside the judgment made on 14/5/2015 together with all consequential decree, orders and/or pending thereto. They cited their inability to attend court on the date scheduled for hearing.
5. The Respondents on their part aver that this application is defective and overtaken by events and cannot lie at this point.
6. The Applicants on their part seek to be heard citing Article 48 of the Constitution, Section 12 of Industrial Court Act, Rule 16 and 17 of Industrial Court Procedure Rules. Article 48 of the Constitution deals with access to justice.
7. The assertion by the Applicant that his application is overtaken by events is not based on any known facts because an application to set aside a judgment given exparte can be made for sufficient cause. I find the Preliminary Objection without merit and I dismiss it accordingly.

Read in open Court this 20<sup>th</sup> day of August, 2015.

**HON. LADY JUSTICE HELLEN WASILWA**

**JUDGE**

**In the presence of:**

John Simiyu for Claimant

Kimathi for 1<sup>st</sup> Respondent