

REPUBLIC OF KENYA

IN THE INDUSTRIAL COURT AT MOMBASA

CAUSE NUMBER 55 OF 2013

BETWEEN

ALFRED KALOKI & 13 OTHERS
CLAIMANTS

VERSUS

SEA FRONT ENTERTAINMENT LIMITED.....
RESPONDENT

RULING

1. The Court made a Ruling dated 10th March 2015, allowing the Directors of the Respondent Company to be held personally liable, for the satisfaction of the decree issued in favour of the Claimants against the Respondent, way back on 14th April 2014. That decree is for a sum of Kshs. 688,973, comprising terminal benefits and compensation for unfair termination. It remains unsatisfied.

2. The Application leading to the Ruling of 10th March 2015 proceeded in the absence of the Respondent. The Respondent had been granted leave to file a Replying Affidavit to the Claimant's Application, out of time. No such Affidavit was filed. On the hearing date, the Respondent's Advocates state they entrusted their Clerk with their file, to find an Advocate to hold brief. The same Clerk was to file the Replying Affidavit in the morning of the hearing. He failed in either case.

3. The Respondent therefore filed an Application dated 17th March 2015, seeking to have the Ruling of 10th March 2015 reversed, and the Application giving rise to that Ruling, heard afresh with the participation of the Respondent. The Application is based on the Affidavit of Counsel for the Respondent, Mr. Edwin Gikonyo Thiongo, sworn on the 17th March 2015. The Claimants replied through an Affidavit sworn by the 1st Claimant Mr. Alfred Kaloki on the 15th April 2015. Parties agreed to have the Application considered and determined on the basis of their Affidavits and Submissions on record.

The Court Finds:-

4. The Application dated 17th March 2015 is a very sad showcase of the extent to which an Employer can go, to avoid meeting its obligations to its former Employees. It is a continuation of the resistance by the Respondent, to satisfy the decree issued by the Court over 1 year ago. There was no explanation by the Respondent why its Clerk did not file the Affidavit in Reply to the Claimants' Application as instructed, or even fundamentally, have an Advocate in Court hold the Respondent's Advocate's brief at the hearing. There is no Affidavit sworn by the said Clerk. It is not clear why the Respondent was filing a Replying Affidavit in the morning of the hearing. The Court agrees entirely with the decision of Justice Nzioki was Makau in ***Collective Bargaining Advisory Centre v. Ministry for Labour & 4 Others [2015] e-KLR***, that in considering the setting aside of *ex parte* orders, the Court must not only examine the reason why there was no Reply to the Claim; why the Applicant failed to turn up when the orders issued; and whether the Applicant had a reasonable reply.

5. In this Application, the Respondent has not given a reasonable explanation why there was no Replying Affidavit properly filed, at the time hearing proceeded; there was no explanation why the Clerk failed to entrust the brief to any of the Advocates present in Court; and as stated at the outset, the Respondent is

merely delaying and avoiding meeting its obligations to its former Employees. There was no reasonable Reply why the Directors should not be made to account. ***The Application dated 17th March 2015 is rejected with costs to the Claimants.***

Dated and delivered at Mombasa this 25th day of September, 2015

James Rika

Judge