



REPUBLIC OF KENYA
IN THE EMPLOYMENT & LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO 1142 OF 2014

(Before Hon. Lady Justice Hellen S. Wasilwa on 14th October, 2015)

KENYA UNION OF JOURNALISTSCLAIMANT/APPLICANT

VERSUS

KENYA BROADCASTING CORPORATION..... 1ST RESPONDENT

COMMUNICATION WORKERS UNION OF KENYA..... 2ND RESPONDENT

RULING

1. The application before court is the one dated 10/2/2015. The application was filed by the Applicant through a Notice of Motion brought under Section 1A, 1B and 3A of the Civil Procedure Act, Order 10 of the Civil Procedure Rules and all enabling provisions of the law.
2. The Applicant seeks orders that:
 1. ***The application be certified as urgent and service be dispensed with in the 1st instance.***
 2. ***The court be pleased to set aside orders issued on 21/1/2015.***
 3. ***That court be pleased to reinstate the Applicants claim dated 7/7/2014.***
 4. ***Costs be provided for.***
3. The application is based on the following grounds:
 - a. ***That the Claimant's Claim dated 8th July 2014 came up for hearing on 21st January 2015 while the Applicant had diarised that the same was supposed to come up for hearing on 14th January 2015.***
 - b. ***That the non-attendance by the Claimant was not deliberate but because of the date that had been given to the clerk of the Advocates for the Claimant on 4th December 2014 by the Advocate who held the brief for the Advocate for the Claimant on that day.***
 - c. ***That it is the interest of justice that the said orders be set aside and the Claimant Claim be reinstated.***

- d. *That there has been no delay in making this application and no prejudice will be suffered by the Respondents which cannot be compensated by throw away costs.*
- e. *That the Applicant even tried to communicate with the Respondents after attending court on 14th January 2015 and finding that the matter is not listed and upon being advised from the registry to invite the Respondents for the purpose of taking a hearing date.*
4. The same is also supported by the supporting affidavit of Oduor Henry John an Advocate of the High Court of Kenya having conduct of this matter.
5. The main submissions by the Applicant is that on the day the case was set for hearing, on 4/12/2014 the Counsel for Applicant who was holding brief, notified the clerk to Applicant's Counsel that the case would be heard on 14/1/2015 and the same was diarized.
6. That on 14/1/2015, the case was not on the cause list and the Applicant even invited the Respondents vide a letter dated 21/1/2015 for purposes of taking a hearing date.
7. The 2nd Respondent responded to the said letter but never informed the Applicant that the claim had been dismissed on 21/1/2015.
8. The Applicant has submitted that no prejudice will be suffered by Respondent if the application is allowed.
9. The parties had agreed to argue this application by way of written submissions. It is however apparent that the Respondent did not file any submissions but had just filed their grounds of opposition to the application stating that the application is frivolous.
10. Having considered the Applicants submissions, I take note of the fact that it is a cardinal principle of the law that everyone must be accorded an opportunity to be heard.
11. Article 48 of the Constitution also guarantees everyone a right to access justice. To lock out the Applicant due to failure or mistake of his Counsel would be tantamount to denying him his right to access justice.
12. I find the application meritorious and I allow it and reinstate this claim for hearing. The parties are directed to take a hearing date at the registry.

Read in open Court this 14th day of October, 2015.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Mugendi holding brief for Claimant

No appearance for Respondent