



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA AT NAIROBI
CAUSE NO 10 OF 2013

SHAMAS VELANI.....CLAIMANT

VS

RAKA MILK PROCESSORS LIMITED.....RESPONDENT

RULING

1. On 11th November 2013, I heard the Claimant's case *ex parte* and on 28th January 2014, I delivered an award in his favour for the sum of Kshs. 1,229,401. The Respondent then moved the Court by way of Notice Motion under certificate of urgency dated 13th February 2014 seeking orders for stay of execution and setting aside of the award.
2. The Respondent's application which is supported by an affidavit sworn by Maurine Awuor Okoth is based on the ground that the Advocate on record for the Respondent were not served with the hearing notice for 11th November 2013. Further, the Advocate's clerk had failed to diarise the mention date to confirm filing of submissions.
3. In a replying affidavit sworn by the Claimant on 25th February 2014, it was deponed that on 17th July 2013 when the matter came up for hearing, Counsel appearing for the Respondent indicated that Mr. Bosek who had conduct of the matter was unwell. The matter was therefore adjourned and hearing set by consent on 11th November 2013. Subsequent to the hearing, the Advocates for the Respondent were served with a mention notice on 20th November 2013.
4. The Court perused its own record and confirmed the following:
 - a. That this matter came up for hearing on 17th July 2013 with Mr. Opundo appearing for the Claimant and Miss Mutuku holding brief for Mr. Bosek for the Respondent.
 - b. That on the said date, Miss Mutuku informed the Court that Mr. Bosek was unwell and sought an adjournment to which Mr. Opundo did not object.
 - c. That it was agreed by consent that the matter would proceed for hearing on 11th November 2013.
 - d. That when the matter came up for hearing on 11th November 2013, there was no appearance for the Respondent and the Court therefore proceeded to hear the Claimant *ex parte*.
 - e. That on 18th November 2013, I directed Counsel for the Claimant to serve the Claimant's submissions on the Respondent's Advocates.
5. From the aforesaid record, the Court has arrived at the conclusion that the grounds

advanced by the Respondent in support of its application for stay of execution and setting aside of the award of this Court delivered on 28th January 2014 are non-existent. The application therefore amounts to an abuse of the court process and is dismissed with costs to the Claimant.

6. Before signing off this ruling I need to point out that it was not lost on the Court that the supporting affidavit sworn by Maurine Awuor Okoth who is an Advocate of this Court contains falsehoods whose only aim can only be to mislead the Court. I therefore summon the said Maurine Awuor Okoth to appear in person before this Court on Thursday, 20th March 2014 at 9.00 am to explain why she set out to mislead the Court. I direct the Deputy Registrar of this Court to ensure personal service of this order on the said Maurine Awuor Okoth.

Orders accordingly.

DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 13TH DAY OF MARCH 2014

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JUDGE

In the Presence of:

.....*Claimant*

.....*Respondent*