



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA AT NAIROBI
CAUSE NO 42 OF 2011
KENYA UNION OF PRINTING PUBLISHING PAPER
MANUFACTURERS AND ALLIED
WORKERS.....CLAIMANT
VS
PRINTING INDUSTRIES LIMITED.....RESPONDENT

RULING

Introduction

1. The Claimant's claim against the Respondent brought by Memorandum of Claim dated 11th January and filed in Court on 17th January 2011 is for unlawful termination of the employment of Willis Njiri Maramba, the Grievant herein. The Respondent filed a Reply on 7th February 2011 but when the matter came up for hearing on 11th March 2014, there was no appearance for the Respondent despite the date having been taken by consent. The Court therefore proceeded to hear the Claimant *ex parte*.

The Respondent's Application

2. The Respondent subsequently moved the Court by Notice of Motion dated 8th April 2014 under certificate of urgency seeking orders to set aside the *ex parte* proceedings of 11th March 2014 and for the matter to be heard *de novo*.
3. The Respondent's application, which is supported by an affidavit sworn by Daniel Maberu, Advocate is based on the following grounds:
- a. That failure by Counsel for the Respondent to attend Court on 11th March 2014 was occasioned by an administrative error which should not be visited on the Respondent;
 - b. That the orders sought do not prejudice the Claimant in any way;
 - c. That it is in the interest of justice that both parties be heard.
4. Counsel for the Respondent, Mr. Maberu told the Court that while it is true that the hearing date of 11th March 2014 was taken by consent, his clerk one Edward Budohi Imbwaga failed to diarise the said date as is the normal practice. As a result, Counsel was not aware of the hearing date and the Respondent was therefore not notified.

The Claimant's Opposition

5. In opposing the Respondent's application, Ms. Njeri for the Claimant submitted that the reasons given by the Respondent for failure to attend Court on 11th March 2014 were not sufficient. First, the date was taken at the Court Registry by consent of the parties on 29th November 2013, a fact that is not denied by the Respondent. Second, cause lists of the Court are posted on the website a day before. Third, this is an old matter dating as far back as 2011 and the application is meant to delay it even further as the Grievant continues to suffer.

Determination

6. Counsel for the Respondent admits that failure to attend Court on 11th March 2014 was occasioned by an administrative mistake in his office and asks the Court to exercise its discretion in favour of the Respondent. The Claimant on the other hand maintains that the reasons advanced by the Respondent are not adequate to move the Court to set aside the proceedings herein.

7. In determining this application, the Court is called upon to balance the Respondent's right to be heard and the Claimant's right to an expeditious conclusion of his case. I have looked at the Respondent's Reply filed on 7th February 2011 and have formed the opinion that it raises substantial issues that need to be put to the Grievant in a full hearing. I therefore set aside the proceedings herein and direct that the matter shall proceed *de novo*. The Respondent shall pay to the Claimant Kshs. 5,000 as thrown away costs payable before the next hearing date.

Orders accordingly.

DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 23RD DAY OF MAY 2014

LINNET NDOLO

JUDGE

In the Presence of:

.....*Claimant*

.....*Respondent*