

REPUBLIC OF KENYA

IN THE INDUSTRIAL COURT OF KENYA AT NAIROBI

CAUSE NO 1997 OF 2012

DAVID MUTEMI.....CLAIMANT

VS

HEBATULLAH BROTHERS LIMITED.....RESPONDENT

RULING

1. On 17th February 2014, I heard the Claimant *ex parte* and on 7th May 2014 I delivered an award in his favour in the sum of Kshs. 328,408. The respondent then filed an application under certificate of urgency seeking orders for stay and setting aside of the *ex parte* award. The Respondent's application is based on the following grounds:

- a. That the Respondent was not served with a hearing notice;
- b. That the Respondent was not served with a notice to file submissions;
- c. That the Respondent has been condemned unheard.

2. In a supporting affidavit sworn by Jackson Omwenga, Advocate on 20th May 2014 it is deponed that since 25th November 2013, when parties were advised to take a hearing date at the registry the Claimant did not invite the Respondent to take a hearing date.

3. In his replying affidavit sworn on 28th May 2014, the Claimant depones that the Respondent's application is full of hearsay, falsehoods and misleading information. Specifically, this matter never came up before the Court on 25th November 2013 as alleged by the Respondent. The Claimant further depones that by notice dated 29th April 2013 which was served on 9th May 2013, his Advocates invited the Respondent's Advocates to attend the Registry on 16th May 2013 for the purpose of taking a mutually convenient date. The Respondent's Advocates failed to attend as requested prompting the Claimant to take an *ex parte* date being 2nd October 2013. A hearing notice dated 21st May 2013 was duly served on the Respondent's Advocates.

4. When the matter came up for hearing on 2nd October 2013, the Respondent's Advocates sought an adjournment which was granted by the Court. Counsels for the parties agreed that the matter would proceed on 17th February 2014 on which date there was no appearance for the Respondent.

5. The single issue for determination in this application is whether the Respondent has made out a case for setting side of the award of this court delivered on 7th May 2014. I have looked at the Court record against the deponements of Jackson Omwenga in the supporting affidavit sworn on 20th May 2014 and found that Mr. Omwenga's affidavit contains falsehoods.

6. In his oral submissions before the Court on 24th July 2014, Mr. Omwenga sought to introduce matters that are not contained in his affidavit sworn on 20th May 2014. This is clearly an abuse of the court process. Having found the contents of the said affidavit to be false, the Court finds no basis for the Respondent's application which is hereby dismissed with costs to the Claimant.

Orders accordingly.

DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 31ST DAY OF JULY 2014

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JUDGE

Appearance:

Mr. Nyabena for the Claimant

Mr. Omwenga for the Respondent