



**REPUBLIC OF KENYA**  
**IN THE INDUSTRIAL COURT OF KENYA**

**AT NAIROBI**

**CAUSE NO. 1176 OF 2010**

*(Before D.K.N. Marete)*

**TAILORSAND TEXTILES WORKERS UNION.....CLAIMANT**

**VERSUS**

**GLOBAL APPARELS LIMITED.....RESPONDENT**

**RULING**

This is an application by way of Notice of Motion dated the 30th April, 2013 and filed on the same date as a certificate of urgency. It seeks orders as follows;

1. This application be certified urgent and service thereof be dispensed with in the first instance.
2. The Honourable court be pleased to grant stay of execution of the award of the Honourable Justice Chemuttut delivered on the 17th April, 2012 pending the hearing and determination of this application.
3. That the Honourable Court be pleased to review and/or vary the order made on the 25th April, 2013 by the Honourable by Justice D.K.N. Marete dismissing the applicant's application dated 3rd April, 2013.
4. The costs of this application be in the cause.

And is grounded on the following;

1. **THAT** there is a mistake and/or an error in the face of the record regarding the hearing dated 3rd April, 2013 on the 8th April, 2013
2. **THAT** it is in the interest of the justice that the order made on the 25th April, 2013 be reviewed and varied and/or set aside.
3. **THAT** it is in the interest of the justice that the order made on the 25th April, 2013 be reviewed and varied and/or set aside.
4. **THAT** the respondent is highly aggrieved and prejudiced by the order made on the 25th April, 2013 as a result of the mistake and/or error apparent on the face of the record.

The matter came for hearing on 22nd May, 2013 before Rika J. who then ordered that the matter be heard before this court. On 7th May, 2013 the matter came for hearing whereby Mr. Owino counsel for the applicant made submissions in support of the application.

He submitted that the application sought orders for stay of execution of the orders of Chemuttut, J. delivered on 17th April, 2012 pending hearing and determination of this application and further that there be a review or variance of the orders of court made on 25th April, 2013 dismissing the respondent's application dated 3rd April 2013.

The dismissal of the application above cited was on grounds of lack of service of the hearing notice as ordered by court. The applicant submits that when the matter came for hearing on 22nd April, 2013 issues on service arose but this was assuaged by counsel presenting a received copy of service to court which court allowed *ex parte* proceedings on the basis that the applicant would file an affidavit of service later in the day.

Further, the grounds of opposition by the respondent are not indicative of absence of service, or at all and the applicant therefore comes to court on discovery of this mistake and therefore the basis of this application and claim.

The respondent opposes the application and submits that he was not properly served. The mode of service did not entirely comply with the court order and was therefore incompetent.

Secondly, the application is brought under bad law. It is supposed to be brought under rule 16 and 32 of the Industrial Court (Procedure) Rules, 2010. The format of the application is not good either.

This application seeks a review of the court orders made on 25th April, 2013. It is not on the merits or substance of that application and therefore the relevant opposition on the grading of the application by the respondent is not due.

I therefore allow the application and issues orders as follows;

1. That there be and is hereby granted stay of execution of the award of the Honourable Justice Chemuttut delivered on the 17th April, 2012 pending the hearing and determination of this application.
2. That the order made on the 25th April, 2013 by the Honourable Justice D.K.N. Marete dismissing the applicant's application dated 3rd April, 2013 be and is hereby vacated.
3. The costs of this application be in the cause.

Dated signed and delivered this 22nd day of May, 2013.

**D.K. Njagi Marete**

**JUDGE**

**Appearances**

1. Mr. Owino instructed by Morara Apiemi & Company Advocates for the respondent/applicant.
2. Wyclife Omondi for the claimant/respondent.