



REPUBLIC OF KENYA

IN THE INDUSTRIAL COURT AT NAIROBI

CAUSE NUMBER 433 OF 2012

**BETWEEN**

WANJIRU THIMBA.....

.....CLAIMANT

**VERSUS**

PLACID VIEW PROPERTIES LIMITED.....

.....RESPONDENT

*Rika J*

*CC. Leah Muthaka*

*Mr. Olewe instructed by Mbugua Mureithi & Co. Advocates for the Claimant*

*Mr. A. S. Kuloba instructed by A. S. Kuloba & Wangila Advocates for the Respondent*

**RULING**

The Court delivered an *ex parte* Award in favour of the Claimant on 19<sup>th</sup> March 2013. The Respondent filed an application dated 18<sup>th</sup> April 2013, exactly at the end of the 30 days given to the Respondent to comply with the Award, seeking stay of execution and setting aside of the Award.

The Claimant filed a replying affidavit sworn on 23<sup>rd</sup> April 2013. The parties agreed to have the application determined by way of written submissions, which have been lodged with the Court.

The Respondent explains that it has an merited Reply to the Claim; It is being condemned unheard; failure to attend Court was the fault of the Advocates then on record for the Respondent; and the Respondent does not intend to delay, or obstruct justice.

The Claimant replies that the case history confirms that the Respondent was given every opportunity to participate in the proceedings, but inexcusably failed to do so. Pleadings by the Respondent were not filed in accordance to the timelines; adjournment was sought, and granted to the Respondent at certain points on flimsy grounds; and the hearing date was fixed by the two Advocates in Court.

*The Court Finds and Orders:-*

1. The Court does not have any grounds to justify orders of stay of execution and setting aside of the Award. An employee must be allowed the full enjoyment of a decision made by the Industrial Court, unless there are special circumstances shown by the employer, warranting delay in execution. In the particular case there were claims of unpaid salaries and allowances. No reasons were given for termination. What would be the justification in the Court setting aside its decision?

2. Secondly, it is as clear as a pikestaff, that the Respondent has not been keen to participate in the dispute resolution process leading to the Award. The Court accommodated the Respondent, extending time to file the Statement of Reply; acceding to less than convincing applications made by the Respondent for adjournment; and even delaying commencement of the hearing in Court, waiting for the

arrival of the Respondent's Advocates. On 21<sup>st</sup> February 2013, the Court waited from 9.45 a.m. to 11.45 a.m, when the *ex parte* hearing opened. Even on the date this application came up for hearing Mr. Kuloba for the Respondent only came to Court at around 11.00 a.m. while the Claimant's Advocate Mr. Olewe, had been sitting in Court from 9.00 a.m.

3. The nature of the Award on record, and the conduct of the Respondent, make it improper for the Court to revisit the Award. ***The application dated 18<sup>th</sup> April 2013 is rejected. Interim order of stay of execution is lifted. No order on the costs.***

Dated and delivered at Nairobi this 28<sup>th</sup> day of June 2013

James Rika

Judge