IN THE HIGH COURT OF SIERRA LEONE
INDUSTRIAL DIVISION

IC. 10/15

NATHANIEL KANGAJU ANOR. PLAINITFF

AND

LEONE DOCK LABOUR CO. LTD RESPONDENT

REPRESENTATION:

E. KARGBO ESQ. COUNSEL FOR THE PLAINTIFF

E. PAPS-GARNON ESQ. COUNSEL FOR THE DEFENDANT

BEFORE THE HON. MR. JUSTICE SENGU KOROMA JA.
RULING DELIVERED ON THE 9TH OCTOBER, 2018.

1. This is an application by way of Notice of Motion dated the 23rd day of February, 2018 for the following Orders:-

1. That this Honourable Court do make an order granting a stay of execution of the Judgment pending the hearing and determination of this application.
2. That this Honourable Court sets aside the Default Interlocutory Judgment herein dated the 15th February, 2018 for reason of irregularity to wit:
   a) The Defendant did not receive notice of the hearing before the Court
   b) The Court was wrongly informed that the Defendant was aware of the hearing before the Court
3. Further and/or in the alternative that this Honourable Court sets aside the Default Interlocutory Judgment herein dated the 15th February, 2018 for reason of Defendant having a good defence on the merits.
4. That the Defendant be at liberty to defend this action.
5. Any other order that this Honourable Court may think fit and just.
6. That the costs of this application be borne by the Plaintiff/Respondent.

2. The application is supported by the affidavit of Editayo Paps-Garnon sworn to on the 23rd day of February, 2018 and the 6th day of March, 2018 respectively.
3. The application came up for hearing on the 24th July, 2018 after several delays on the part of both Counsel. Mr. Paps-Garnon for the Defendants/Applicant (hereinafter referred to as the "Applicants") relied on paragraphs 5, 6, 7, and 8 of his affidavit dated the 23rd February, 2018. In the said paragraphs, particularly 5 and 6, thereto, the Deponent tried to give the reason for their failure to appear in Court- which was that he was not informed by Notice or any other means of the dates the matter came before the Court for hearing and the information given by the Counsel for the Plaintiff/Respondent (hereinafter referred to as the "Respondent") that he had been notified via a letter of the date of hearing was not correct.
4. Counsel further gave other reasons why the Ruling should be set aside. These were:-

a) That the applicants have a good defence to the action and that proceedings should continue in this light;
b) That the Respondents were never actually terminated nor were they officially made redundant but rather chose to voluntarily make themselves redundant in a bid to join another set of workers that had been made redundant and paid their full benefits.
c) That there were exceptional circumstances to this matter and irreparable harm would be done to the Applicant if a stay was not granted.

5. In the supplemental affidavit sworn to on the 6th March, 2018, the deponent, Editayo Paps-Garnon Esq. exhibited what he referred to as a "Default Interlocutory Judgment" as EPG2."
6. Mr. Paps-Garnon concluded by relying on Order 41 (2) of the High Court Rules, 2007.
7. In response to the application, Elvis Kargbo Esq. submitted, firstly, that the application should not be entertained as it was not a default Judgment as referred to by his colleague. The reason for this submission was that witnesses testified and were cross-examined by the Applicants' Counsel. A Default Judgment would only be entered in a case in which the Defendant does not appear.
8. Secondly, Mr. Kargbo submitted that the application was made outside of the six day period provided for by the High Court (Industrial Court Division) Rules, 2000.
9. On the complaint that Applicant did not receive Notice of hearing, Mr. Kargbo contended that this matter commenced on the 15th February, 2015, a period of three years. During that period, the Applicant participated in the proceedings and was served notices.

DETERMINATION

10. I have perused the affidavit in support of the Application and listened to both Counsel. The first issue to lay to rest is whether the Judgment delivered by this Honourable Court on the 15th February, 2018 was an "Interlocutory Default Judgment/Ruling". In determining this question, I shall first of all establish what constitutes "default" under the Regulation of wages and Industrial Relating Act No. 18 of 1971 and the High Court (Industrial Court Division) Rules, 2000. Rule 8 (1) of the Rules provides that "on the date fixed for hearing of the dispute if one party is absent, the party present may prove his case so far as the burden of proof lies on him". This provision envisages a situation in which a party fails to appear in Court for the hearing of the dispute. This is different from Default of appearance or defence in the High Court Rules, 2007. Order 13 (1) thereof, for example, provides that "where a Defendant fails to appear to a Writ of Summons and the Plaintiff is desirous of proceeding upon default of appearance under this Order or under these Rules, he shall before taking such proceedings on default file an affidavit of service and an affidavit of search." Order 13 Rule 9 deals with setting aside such a Judgment.
11. I agree with Counsel for the Respondent, that the nomenclature "Interlocutory default Judgment/Ruling do not apply in this case. Here the Applicant had appeared in Court and cross-examined witnesses. Entering a Judgment in default is usually a purely administrative matter, and involves no consideration by the Court of the merits of the

claim. All the Plaintiff usually has to do, once the time for responding to the claim has elapsed, is to file the necessary papers and the Master and Registrar will act upon it and Judgment will be entered. However it does not give rise to an estoppel per rem Judicatam and may be set aside if the Defendant can show a real prospect of defending the claim. This is the procedure in the High Court.

12. In the Industrial Court, when a party fails to appear, the other party may be allowed to prove his claim. Any Judgment given thereafter will be regarded as a final Judgment.

13. To my mind, this procedure can be used at any stage of the trial and not just at the first hearing. However, unlike in the High Court, though the said Judgment could be set aside, the period within which to file an application to do so is six (6) days. Here the Judgment was delivered on the 15th February, 2018 but the application to set it aside was on the 23rd day of February, 2018 Eight days after. This is not a long period and the Court in it discretion could allow the Applicant to move his application, which I have done in this matter.

14. On the other arguments raised by the Applicant about the Respondents been casual works and that their resignations were not proper, these are not issues for any further determination at a trial as they have been dealt with in the Judgment of this Court dated 15th day of February, 2018

15. Finally, I hold that there are no special circumstances to warrant a stay. All the issues intended to be argued in allowing the Applicant to open its case have been dealt with in favour of the Respondents in the Judgment of 15th day of February, 2018 and the final Judgment dated 18th June, 2018.

16. In the circumstances, the application fails. The Judgment of this Court dated 18th day of July, 2018 shall now take effect.

Cost to be taxed if not agreed.

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Hon. Mr. Justice Sengu Koroma (J.A.