



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC CASE NO. E063 OF 2020

PETER OBONDO KAHU

(suing as the Administrator of NAKUMATT HOLDINGS LIMITED.....PLAINTIFF

VERSUS

BOARD OF TRUSTEES NATIONAL SOCIAL SECURITY FUND (NSSF).....DEFENDANT

RULING

1. Before me is an application dated 16.11.2020 in which the Plaintiff is seeking the dismissal of the Defendants defence and counterclaim. The Applicant avers that summons to enter appearance were served upon the Defendant on 10.9.2020 and that factoring working days, excluding weekends in terms of Order 6 Rule I of the Civil Procedure Rule 2010, the Defendant ought to have entered appearance on 30.9.2020 while defence and counterclaim ought to have been filed by 20.10.2020.
2. However, the Memorandum of appearance was filed on 7.10.2020 while defence and counter claim was filed on 22.10.2020 in contravention with the aforementioned rules of procedure. That in the aforementioned circumstances, the Plaintiff proceeded to lodge a request for interlocutory judgment on 8.10.2020.
3. The Plaintiff further states that no verifying affidavit has been filed to support the counterclaim.
4. The Defendant has opposed the application vide a Replying Affidavit dated 18.3.2021 and admits having been served with the pleadings in Defendant's offices on 10.9.2020. However, the Covid-19 pandemic had scaled down activities especially in government offices and hence the process of instructing their advocates and filing their documents took a while. The defence further states that they mistakenly omitted to scan the verifying affidavit but the same is ready.
5. I have considered all the arguments raised herein. In terms of the directions given on 11.11.2021 by the Court, the issue for determination is whether the counterclaim of the Defendant should be struck out.
6. It is noted that the Applicant was directed to file their submissions by 18.11.2021 while Respondent was to file theirs by 2.12.2021 but no such submission were filed.
7. This court takes judicial notice that for the better part of year 2020, a pandemic known as Covid-19 visited the country and the entire globe thereby hampering the normal activities.
8. In **Habo Agencies Limited vs. Wilfred Odhiambo Mosirego (2015) eKLR** , the case of **Ratnan v Cumasany (1964) 3 ALL E. R 933** was cited where it was held that;

“The rules of court must prima facie be obeyed and in order to justify a court in extending the time during which some step in procedure requires to be taken, there must be some material on which the court has exercised its discretion”
9. I find that the explanation given by the Defendant in the delay to file its pleadings is plausible and excusable noting that there was no inordinate delay in filing the pleadings in question. I am inclined to exercise discretion in favour of admitting the counterclaim of the Defendant as having been properly filed. The corresponding verifying affidavit is to be filed and served within the next 7 days.
10. The application is dismissed but the Defendant still having filed their documents late are condemned to pay thrown away costs of Kshs 15,000 to the Plaintiff.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 9TH DAY OF FEBRUARY, 2022 THROUGH MICROSOFT
TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:-

Amandi holding brief for Daudi Mumbe for the Plaintiff

Court Assistant: Eddel Barasa