



Owiti & 173 others v Caddell Construction Company (De) LLC (Miscellaneous Application E076 of 2024) [2025] KEELRC 1918 (KLR) (25 June 2025) (Ruling)

Neutral citation: [2025] KEELRC 1918 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
MISCELLANEOUS APPLICATION E076 OF 2024**

DKN MARETE, J

JUNE 25, 2025

BETWEEN

DESMOND OTIENO OWITI & 173 OTHERS CLAIMANT

AND

CADDELL CONSTRUCTION COMPANY (DE) LLC DEFENDANT

RULING

1. This is an application dated 29th February 2024 by the Defendant/Applicant seeking orders to stay the proceedings of 5th February 2024 in CMELRC Cause No. 1102 of 2022. It also seeks setting aside the said proceedings as a nullity and invokes this Court's supervisory jurisdiction over subordinate courts.
2. The application is grounded on alleged violations of the Applicant's constitutional right to a fair hearing under Article 50(2)(c) and (k) of the *Constitution of Kenya*, 2010, and is supported by the affidavit of Ivia Kitonga, sworn on the same date.
3. The Claimants/Respondents, through their Replying Affidavit sworn on 14th March 2024, oppose the application. This is on grounds of being incompetent, unmerited, an abuse of court process and aimed at delaying justice. The Respondents argue that the Applicant has failed to comply with procedural requirements under the *Employment and Labour Relations Court (Procedure) Rules*, 2016, and has not demonstrated sufficient cause for the reliefs sought.
4. The background to this matter is largely uncontested. The Claimants filed a class action suit against the Applicant on 18th June 2022, comprising individual claims of 174 former employees. The Applicant entered appearance on 8th July 2022 but failed to file a response within the stipulated twenty- one (2) days under Rule 13(1) of the *Employment and Labour Relations Court Rules*. Instead, the Applicant filed a preliminary objection which was dismissed on 30th May 2023.
5. On 24th July 2023, the trial court granted the Applicant leave to file its response within 30 days but there was not compliance on her part. The matter was subsequently scheduled for hearing on



- 5th February, 2024. On that date, the Applicant sought an adjournment to finalize its response, citing logistical challenges, including the bereavement of its Project Manager, Steve Taylor, who was responsible for authorizing pleadings. The trial court denied the adjournment and directed the Claimants to file written submissions. The matter thus effectively proceeded as an undefended suit under Rule 15(3) of the [Court's Rules](#).
6. Aggrieved by the directive of the Court the Applicant filed this application on 29th February 2024, arguing that the trial court's refusal to grant an adjournment violated its right to a fair hearing. The Claimants, in opposition, contend that the Applicant's delay of nearly two years is inordinate, inexcusable and that the application is procedurally defective.
 7. The issues for determination therefore are:
 - (i) Whether the proceedings of 5th February 2024 violated the Applicant's right to a fair hearing.
 - (ii) Whether the Court should stay the proceedings and set aside the trial court's directions.
 - (iii) Whether the application complies with procedural requirements under the [Employment and Labour Relations Court \(Procedure\) Rules, 2016](#).
 8. The Applicant on issue No.(i) above invokes Article 50(2)(c) and (k) of the [Constitution](#) which guarantees the right to adequate time and facilities to prepare a defense and to adduce and challenge evidence. It also seeks to rely on the authority of [Francis Karioko Muruatetu & Another v Republic](#) [2017] eKLR where the Supreme Court emphasized that the right to a fair trial is absolute and non-derogable under Article 25(c).
 9. While the right to a fair hearing is sacrosanct, it is not absolute. Courts have consistently held that this right must be balanced against the need for expeditious disposal of cases. In [Ketteiman v Hansel Properties Ltd](#) [1988] 1 All ER 38 the court cautioned against indulging parties who negligently delay proceedings. This also applies to the deliberate delay of court's proceedings. Similarly, in [Shah v Mbogo & Another](#) [1967] EA the court held that setting aside orders is discretionary and should not aid parties who obstruct justice.
 10. In the circumstances of this case, the Applicant had nearly two years to file its defense but failed to do so despite being granted an extension on 24th July 2023. The reasons advanced—bereavement and logistical challenges—do not justify such prolonged inaction. As enunciated in the authority of [Chaka Nyando Chidunga v Cargill Kenya Limited](#) [2018] eKLR a corporate entity cannot excuse non-compliance based on the absence of a single employee. The Applicant's conduct suggests lack of diligence and the trial court was justified in proceeding accordingly under Rule 15(3).
 11. The other issue touches on stay of proceedings and setting aside the directions of the lower court. The Applicant seeks a stay of execution under Order 42 Rule 6 of the [Civil Procedure Rules](#), arguing substantial loss given the pecuniary implications of the claim (KSh 35 million). However, this court is a specialized court and its procedures are governed by its own rules. As held in [Prisca Jepng'etich v Generation Career Readiness Social Initiative Limited](#) [2021] eKLR, the [Civil Procedure Act](#) does not apply unless expressly sanctioned by the [Employment and Labour Relations Court \(Procedure\) Rules](#).
 12. Here, Rule 32(2) of the [2016 rules](#) permits the application of civil procedure rules only in execution of court matters. The Applicant's reliance on Order 42 Rule 6 is thus misplaced. Even if the Court were to consider the merits, the Applicant has not demonstrated substantial loss or undue prejudice. The mere fact that a claim is large does not, by itself, warrant a stay.
 13. On setting aside, the Applicant has not filed a draft defense or shown a prima facie case on the merits. In [Global Tours and Travels Limited](#), HC Winding Up Cause No. 43 of 2000, the court observed and



emphasized that stay orders should serve the interests of justice. In this case, granting the orders would further delay a matter already pending for two years, prejudicing the Claimants' right to timely justice.

14. The last issue touches on procedural compliance by the Applicant. The Respondents argue that the application is incompetent for failing to follow *Employment and Labour Relations Court (Procedure) Rules*, 2016. Rule 8 of these requires appeals to be filed by memorandum of appeal, accompanied by the lower court's proceedings and evidence. The Applicant has not done any of these. She had not filed an appeal but seeks supervisory orders under Article 165(6) of the *Constitution*.
15. While this Court has supervisory jurisdiction, this must be invoked judiciously. The Applicant's failure to exhaust the proper appellate mechanism under Rule 8 renders this application defective. As held in *Vincent Mwatsuma Nguma & 5 Others v Kilifi Mariakani Water & Sewerage Co Ltd* [2021] eKLR, parties must adhere to specialized court procedures.
16. The Applicant's delay in filing its defence is inexcusable and does not warrant the intervention of this Court. The trial court acted within its discretion in denying the adjournment and directing that the matter proceeds. The application therefore is procedurally flawed and lacks merit.
17. I am therefore inclined to dismiss the appeal with costs to the Claimants/Respondent.

DELIVERED, DATED AND SIGNED THIS 25TH DAY OF JUNE 2025.

D. K. NJAGI MARETE

JUDGE

Appearances:-

Mr. Kitonga instructed by Nzamba Kitonga Advocates LLP for the Defendant/Applicant.

Mr. Wataba instructed by Wataba, Were & Associate Advocates for the Claimants/Respondents.

