



**Muasya v Pembe Flour Mills Limited (Cause E459 of 2023)  
[2024] KEELRC 422 (KLR) (29 February 2024) (Ruling)**

Neutral citation: [2024] KEELRC 422 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E459 OF 2023  
J RIKA, J  
FEBRUARY 29, 2024**

**BETWEEN**

**JANET MUTHONI MUASYA ..... CLAIMANT**

**AND**

**PEMBE FLOUR MILLS LIMITED ..... RESPONDENT**

**RULING**

1. The Claimant applies, through her Notice of Motion Application dated 8<sup>th</sup> August 2023, for an order that, the Court directs the Claim to be heard by way of formal proof.
2. The Application is grounded on Rules 13[1] and 15[3] of the *Employment & Labour Relations Court [Procedure] Rules, 2016*.
3. It is supported by the Affidavit of the Claimant's Advocate Dennis K. Wambua, sworn on 8<sup>th</sup> August 2023. He explains that he served the Summons and the Claimant's Pleadings on the Respondent, on 29<sup>th</sup> June 2023.
4. The Respondent entered appearance on 7<sup>th</sup> July 2023. Rule 13[1] cited above, requires that a Respondent who intends to respond to a Claim, shall enter appearance and file the Statement of Response, within 21 days of service.
5. The default is that the Respondent entered appearance, but did not file its Statement of Response, within the stipulated 21 days.
6. The Claim must therefore be deemed to be undefended, and proceed on formal proof.
7. The Claimant supplements her arguments in an Affidavit sworn on 7<sup>th</sup> November 2023.
8. The Respondent relies on the Affidavit of its Advocate, Alibhai F. Hassan, sworn on 13<sup>th</sup> October 2023.



9. It is conceded that the Respondent entered appearance within time, but did not file the Statement of Response, within time. Advocate Hassan explains that he held several meetings with the Respondent, to obtain full instructions and documentation, hence the inadvertent delay.
10. The Respondent filed its Statement of Response and Documents, on 17<sup>th</sup> August 2023.
11. The Respondent submits that Article 159 [2] of the Constitution requires the Court to administer justice, without undue regard to procedural technicalities. The Respondent also relies on Section 3 of the E&LRC Act. The Respondent submits that admission of the Statement of Response, will not prejudice the Claimant in any way.
12. It was agreed that the Application is considered and determined, on the strength of the Parties' Affidavits and Submissions. The Parties confirmed filing and exchange of Submissions at the last appearance before the Court, on 24<sup>th</sup> November 2023.

**The Court Finds: -**

13. It is correct as submitted by the Claimant, that a Statement of Response and the Memorandum of Appearance, must be filed before the Court and served on the Claimant, within 21 days, under Rule 13 [1] of the E&LRC [Procedure] Rules, 2016.
14. Procedural Rules of a Court are not procedural technicalities; they serve as facilitators of substantive justice. They form a fundamental plank, in the edifice of the rule of law. Courts cannot operate; Parties would not know how to proceed; and there would be disorder, without procedural rules. Regard to the Rules can never be an undue regard.
15. The 21 days prescribed under the Rules are deemed sufficient by the authors, for Respondents who intend to defend a Claim, to obtain instructions and documents to enable them defend.
16. If the Respondent needs more time, there is no bar to filing a holding Statement of Response within the prescribed time, and seeking to bring the full Response later, through the mechanism of Amendment to Pleadings.
17. It is completely out of order, to just file Pleadings and Documents out of the prescribed time, more so without the leave of the Court, and seek to explain delay only when the Claimant seeks to proceed to formal proof.
18. The Court has a duty however, to do substantive justice to the Parties, and notes that a comprehensive Statement of Response, complete with bundles of documents, has been filed. It is not in the interest of justice to proceed with the Claim undefended. The Claimant pleads that she resigned from employment. The Respondent states that the Claimant voluntarily resigned, while faced with disciplinary proceedings.
19. Substantive justice in the circumstances, is best served by allowing the Respondent to defend. The procedural breach occasioned to the Claimant, can be compensated by way of costs.

**It Is Ordered: -**

- a. The Application filed by the Claimant dated 8<sup>th</sup> August 2023 is declined.
- b. The Statement of Response and Documents filed by the Respondent are admitted out of time, and deemed duly filed and served.



- c. Costs of Kshs. 15,000 to be paid to the Claimant by the Respondent, before the Respondent can be granted further audience before the Court.
- d. Parties to schedule the Claim for pre-trial conferencing.

**DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY AT NAIROBI, THIS 29<sup>TH</sup> DAY OF FEBRUARY 2024.**

**JAMES RIKA**

**JUDGE**

