



Kabue v Co-operative Bank of Kenya Ltd (Employment and Labour Relations Cause 6593 of 2020) [2024] KEELRC 353 (KLR) (23 February 2024) (Ruling)

Neutral citation: [2024] KEELRC 353 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE 6593 OF 2020
AN MWAURE, J
FEBRUARY 23, 2024**

BETWEEN

LYDIAH WANJIRU KABUE CLAIMANT

AND

CO-OPERATIVE BANK OF KENYA LTD RESPONDENT

RULING

1. The claimant/applicant Lydia Wanjiru Kabue filed an application *via* a notice of motion dated 25th October 2023 seeking the following prayers:
 1. That this applicant be certified as urgent on account of urgency and that the same be heard *ex parte* in the first instance.
 2. That pending the hearing and determination of this application this honourable court be pleased to arrest its ruling set to be delivered on 24th November 2023.
 3. That the claimant/applicant be granted leave to amend her statement of claim.
 4. That the claimant/applicant be granted leave to put in her defense to the counterclaim.
 5. That the cost of this application be provided for.
2. The applicant says she was aware the hearing of the suit was on 16th October 2023 but her advocate did not turn up. She says she made an effort to look for another attorney fast and the advocates logged into the court and found the court had already proceeded *ex parte* and given a ruling date for 24th November 2023.
3. She says her advocate missed to attend court on several occasions but she had legitimate expectations that he was competent and would represent her.



4. She says she visited the firm several times and would be lied on the progress of the case and being a layman she trusted her advocate.
5. She requests the mistakes of her advocates not to be visited on her. She further says the counterclaim raises triable issues and as well there has been new developments since the suit was filed.
6. The applicant avers no prejudice will be occasioned to that respondent if the orders prayed are granted.

Respondents Response

7. The respondent filed his replying affidavit dated 13th November 2023. The respondent objects to the application averring that this is an attempt to delay the expeditious determination of the suit on account of the respondent's counterclaim.
8. He says that on 1st March 2021 the claimant was served with the statement of defence and counterclaim but did not file a reply. It was then listed for pre-trial on 24th March 2022 and claimant did not raise issues of filing any reply. The case was mentioned on 10th February 2022, 7th March 2022 and 24th March 2022.
9. The case was set for hearing on several dates including 16th October 2023. On 16th October 2023 the claimant did not appear for hearing and despite having been served with a hearing notice dated 17th August 2023 she then filed the notice dated 28th October 2023 which was filed on 2nd November 2023 praying for arrest of the ruling scheduled to be delivered on 24th November 2023.

Analysis and determination

10. The issue here for determination is whether the claimant has provided valid ground to be allowed to defend her suit and to amend her response and in particular to response to the counterclaim.
11. Section 13(5) of the [employment and labour relations court procedure rules](#) provide that:

“ the court may on application by a party to any proceedings extend or reduce the time within which to a responding party may respond to pleading.”
12. This case the claimant has taken inordinately long time to regularise her pleadings and that is quite unacceptable. She says her former advocate kept giving her wrong information and she believed all was going on well with her case. On the day of the hearing on 16th October 2023 she said the advocate did not show up at all and she said she quickly got another advocate who filed this application dated 25th October 2023.
13. In the event that is the true position and seeing the claimant quickly filed this application after the court gave a ruling date the court is reluctantly persuaded to give her the benefit of doubt and give her an opportunity to prosecute her case.
14. The Kenya constitution is explicit that the state shall ensure access to justice for all persons. This is in article 48 of the Kenya Constitution. Article 50 of the [Constitution](#) ensure right to very person to have any dispute be resolved by the application of the law.
15. The court will exercise its jurisdiction and give the claimant an opportunity to have her case heard on merits assuming the mess she is in was not of her making but was caused by her counsel.



16. The court therefore orders that the ruling that was scheduled to be delivered on 24th November 2023 is hereby arrested and the claimant is allowed to respond to the counterclaim and to amend the claim within 14 days from today.

17. The claimant will pay throw away costs of Kshs 10,000/- to the respondent's advocates.

Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 23RD DAY OF FEBRUARY, 2024.

ANNA NGIBUINI MWAURE

JUDGE

Order

In view of the declaration of measures restricting Court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open Court. In permitting this course, this Court has been guided by Article 159(2)(d) of the Constitution which requires the Court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of Section 1B of the Procedure Act (Chapter 21 of the Laws of Kenya) which impose on this Court the duty of the Court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

A signed copy will be availed to each party upon payment of Court fees.

ANNA NGIBUINI MWAURE

JUDGE

