



REPUBLIC OF KENYA



KENYA LAW
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Gaya v Kenya Forestry Research Institute (Employment and Labour Relations Cause E269 of 2021) [2024] KEELRC 320 (KLR) (21 February 2024) (Ruling)

Neutral citation: [2024] KEELRC 320 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE E269 OF 2021
AN MWAURE, J
FEBRUARY 21, 2024

BETWEEN

HUMPHREY CYPRIAN GAYA CLAIMANT

AND

KENYA FORESTRY RESEARCH INSTITUTE RESPONDENT

RULING

1. The matter before the court pertains to the respondent's filing of the amended memorandum of response and witness statement without the leave of the court. They are now asking the court to consider the amended response of defence and e amended witness statement to be regarded as duly filed. The said amended response witness statement are dated on 28th September 2023.
2. The claimant is opposed to that application to amend the response though he says he has no objection to filing the amended witness statement.
3. The court has observed that Hon. Deputy Registrar on 15th November 2023 granted respondent 14 days to file their bundle of documents. For reasons best known to the respondents they did not seek court order to file the amended response.
4. Section 13 (3) of *Employment and Labour Relations Court Rules* procedures provides a response should be filed within 7 days of service. Section 13(4) provides the pleadings of a suit shall close within 14 days after service of reply or if no reply to response 14 days after filing of the response. Section 13(5) provides that the court may on application by a party to any proceedings extend or reduce the time within which a responding party may respond to a pleadings.
5. Since laws are passed to be obeyed the court finds the respondents filed amended defence without the leave of the court way past the time provided in the law. The court finds no grounds to allow the amended defence to be regarded as filed on 29th September 2023 whereas pleadings closed on 13th August 2021. The same is rejected.



6. The witness statement dated 29th September 2023 is admitted in court however and witness can proceed to testify during the hearing date.

Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 21ST 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

