



Sang v Camellia Kenya Limited (Employment and Labour Relations Cause 158 of 2018) [2024] KEELRC 588 (KLR) (7 March 2024) (Ruling)

Neutral citation: [2024] KEELRC 588 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT ELDORET
EMPLOYMENT AND LABOUR RELATIONS CAUSE 158 OF 2018
MA ONYANGO, J
MARCH 7, 2024**

BETWEEN

PHILIP KIPROP SANG CLAIMANT

AND

CAMELLIA KENYA LIMITED RESPONDENT

RULING

1. Vide an application dated 3rd July 2023 and filed in court on 7th July 2023, the Respondent seeks the following orders; -
 - i. Spent
 - ii. That pending the hearing and determination of this application, this Honourable Court be pleased to stay these proceedings and defer delivery of the ruling scheduled for 20th July 2023.
 - iii. That this Honourable Court be pleased to vacate or set aside the Orders issued on 14th June 2023 directing that parties file submissions in anticipation of the ruling scheduled for 20th July 2023.
 - iv. That this Honourable Court be pleased to direct that the Respondent to adduce its testimony in its defense.
 - v. That this Honourable Court be pleased to make such other or further orders that ends justice may require
 - vi. That costs be provided for
2. The grounds in support of application are that:
 - a. The present matter was scheduled to come up for hearing on 21st March 2023 for defense hearing before this Court.



- b. The matter was never called out during the call over as the case file was not presented to the Court by the registry for the Court's attention and action.
 - c. The Claimant's advocates proceeded to fix the matter for hearing on 17th April 2023 without inviting the Respondent's counsel or notifying Counsel for the Respondent of the hearing date.
 - d. Counsel for the Respondent wrote a protest letter to the Applicant's Counsel on 22nd May 2023 highlighting instances when or where they contravened the essential codes of practice in terms of the management of the present case.
 - e. That Counsel for the Claimant proceeded to slate the matter for mention on 14th June 2023 to confirm filing of submissions again without the participation of Counsel for the Respondent.
 - f. On the said date, Counsel for the Respondent was engaged before Justice Angote in Nairobi ELC No 1532 of 2014 *Trikuti Investments Limited v Alasow Hassan Mobammad & 4 others*.
 - g. That unfortunately, when the matter came up on 14th June 2023, the matter was slated for judgment on 20th July 2023.
 - h. That the actions of the Claimant or his Counsel seek to disenfranchise the Respondent seeking to condemn him unheard.
 - i. That despite having been notified, the Claimant's counsel failed, neglected and or refused to heed the Respondent's call to obtain a mutually convenient date for hearing of this matter.
 - j. That the Respondent has a plausible defense and is willing and eager to finalize the present matter by giving his testimony to afford the Honourable Court to reach a just and fair decision.
 - k. That by their conduct, their actions contravene or offend the Respondent's rights to be subjected to a fair trial process as espoused in Article 50(2) of the *Constitution*.
3. The application is supported by the affidavit of Ngaira Rashid, Counsel for the Respondent sworn on 3rd July 2023. That Affidavit reiterates the contents of the grounds upon which the application is founded.
 4. The Claimant opposes the application by his Replying Affidavit sworn on 18th July 2023 in which he states that on 9th November 2022, he testified and closed his case and the matter was slotted for Defense hearing on 8th December 2022.
 5. The Claimant deposes that on 8th December 2022 the court was not sitting and the matter was adjourned to 21st February 2023. That on the said date, the court was not sitting and counsel for the Claimant moved the registry and was issued with a mention date on 2nd March 2023 and the Respondent's counsel was served with a mention notice.
 6. It is further deposed that on the 2nd March 2023, the court issued a defense hearing date for 21st March 2023 and hearing notice was served on the Respondent's counsel. It is the Claimant's case that the on the 21st March 2023, the Respondent's counsel on record did not attend court despite being aware that the matter was coming up for defense hearing. As a result the court closed the defense case and directed that the parties file submissions and issued a mention date for 17th April 2023.
 7. The Claimant avers that on the 17th April 2023, counsel for the Claimant informed the court that he had not notified the Respondent's counsel that the matter was coming up in court on that day and requested for a further mention date. It is further deposed that the court ordered the Claimant's



- counsel to inform the Respondent's counsel to file their written submissions within 14 days and also that the matter be mentioned to confirm filing of submissions on 14th June 2023.
8. That on 14th June 2023, counsel for the Respondent did not attend court despite being aware that the matter was coming up for mention and the court in the absence of the Respondent's counsel issued a judgment date for 20th July 2023.
 9. The Claimant avers that all through, his counsel on record has been informing the Respondent's counsel of dates when the matter would be in court but the Respondent's counsel has been ignoring or absconding court attendance.
 10. According to the Claimant, the instant application has been made with the intention of taking him in circles in order to frustrate the logical conclusion of the main suit.
 11. The Claimant further states that the application has been brought after unreasonable delay. The court was thus urged to dismiss the application with costs to the Claimant.
 12. The application was canvassed by way of written submissions. The Respondent's submissions were filed on 18th August 2023 while the Claimant's submissions were filed on 6th October 2023.
 13. I have considered both submissions which reiterate the contents of the rival affidavits.

Determination

14. Upon analyzing the application herein, the affidavits thereto and the submissions filed by the parties, I find that the only issue that falls for the court's determination is whether the Respondent has made a case for the grant of orders sought in its application.
15. I have carefully perused the record. The Claimant testified on 9th November 2022 and closed his case. Counsel for the Respondent requested for an adjournment and the matter was scheduled for hearing on 8th December 2022. On 13th December 2022, counsels for both parties appeared virtually in the registry and they consented to have the matter fixed for defence hearing on 21st February 2023. On 21st February, the court was not sitting. The matter was then fixed for mention on 2nd March 2023 for purposes of taking a hearing date at the registry. On the 2nd March 2023, counsel Mutai appeared for the Claimant. The Respondent's counsel was absent. The matter was fixed for hearing on 21st March 2023. Counsel for the Claimant was ordered to serve the Respondent's counsel.
16. On the 21st March 2023, counsel for the Claimant, Mr Chepkwony was present in court while the Respondent's counsel was absent. Counsel for the Claimant informed the Court that the Respondent's counsel had stated that the date was not convenient to them. Nevertheless, the court directed for the hearing of the matter to proceed. The Claimant's counsel closed the defence case and upon the court satisfying itself that the Respondent's counsel was properly served with a hearing notice and that he acknowledged service via email, the Respondent's case was closed. The court then directed that parties file written submissions and fixed the matter for mention on 17th April 2023. A further mention dated was fixed on 17th April 2023 after the Counsel for the Claimant informed the court that he had not served the Respondent's counsel with the mention date.
17. On the said 14th June 2023, only counsel for the Claimant was present. The court issued a judgment date for 20th July 2023.
18. On 7th July 2023, the Respondent's counsel filed the instant application which was placed before the court on 10th July 2023. The court directed that the application to be served upon the Claimant and fixed it for inter partes hearing on 31st July 2023.



19. The Respondent's counsel has argued that on 21st March 2023 when the matter was slated for defence hearing, the matter was never called out during call over. This is not the true position. From the analysis of the record above, the matter was called out on the said date but counsel for the Respondent was absent.
20. There is no indication that the Respondent's counsel followed up to know what transpired in court on the 21st March 2023 and even after the matter was fixed for mention on 17th April 2023, counsel for the Respondent was again absent.
21. It would be expected that counsel for the Respondent upon realizing that the matter had proceeded ex parte, would have made haste in filing the instant application. Counsel took three months before filing this application.
22. From my understanding of the Respondent's argument, he was aware of the mention date for 14th June 2023 when the matter was slated for confirmation of filing of submissions and in fact he informed the Claimant's counsel that the date was not convenient as he would be attending to another prefixed matter.
23. In my view, the Respondent's counsel has been indolent in filing the instant application. He waited until the matter was fixed for judgment to file the instant application. It is my finding that the grounds adduced by the Respondent in support of its application are frivolous.
24. However, in the interest of justice and considering that the person who will suffer if the application is declined is the Respondent who may not have been at fault, I will allow the application and direct that a hearing date for the Respondent's case be fixed at the time of delivery of this ruling.
25. The Respondent will meet the costs of this application.
26. Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY ON THIS 7TH DAY OF MARCH 2024

MAUREEN ONYANGO

JUDGE

