



**Tonio v Kenya Power & Lighting Co. Ltd (Cause 1359 of 2018)
[2023] KEELRC 290 (KLR) (9 February 2023) (Ruling)**

Neutral citation: [2023] KEELRC 290 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1359 OF 2018
L NDOLO, J
FEBRUARY 9, 2023**

BETWEEN

ROBERT NGUGI TONIO CLAIMANT

AND

KENYA POWER & LIGHTING CO. LTD RESPONDENT

RULING

1. The main claim in this matter came up for hearing on October 25, 2022, but there was no representation for the respondent. I therefore took the claimant's testimony and proceeded to close the respondent's case, upon which I directed the parties to file final submissions.
2. According to the court record, the matter was mentioned before the Deputy Registrar on December 1, 2022, with Mr. Waweru appearing for the respondent. The Deputy Registrar gave a further mention date for January 18, 2023 on which date there was no appearance for the respondent. I reserved judgment for February 2, 2023 and directed the claimant to notify the respondent.
3. Thereafter, the respondent moved the court by way of Notice of Motion under Certificate of Urgency dated January 19, 2023, seeking orders to arrest/stay delivery of judgment and to set aside the ex parte proceedings.
4. The Motion, which the respondent chose not to support by any affidavit, is based on the following grounds:
 - a. The respondent has not been granted an opportunity to exercise its constitutional right to be heard;
 - b. The respondent was never appraised of the hearing of the matter and at all times, the respondent knew that the matter was coming up for mention to confirm filing of an amended



- witness statement and to confirm whether the Respondent had been mapped in the e-filing portal;
- c. Despite amending the witness statement and serving it on the claimant, the respondent struggled to avail it in court since the system did not allow its appearance in the portal;
 - d. The respondent has been denied the chance to be heard and to cross examine the claimant on his allegations;
 - e. The respondent has been denied a chance to file its witness statement through no fault of its own;
 - f. The claimant did not serve his submissions on the Respondent until after the mention of January 18, 2023;
 - g. It is in the interest of justice that the respondent be heard.
5. My perusal of the court record reveals the following:
- a. On June 2, 2022, both parties appeared before the Deputy Registrar, when the matter was fixed for mention on June 20, 2022 to confirm compliance with pre-trial requirements;
 - b. On July 15, 2022, the matter was mentioned before the Deputy Registrar in the respondent's absence. The Deputy Registrar fixed the matter for further mention on September 19, 2022;
 - c. On September 19, 2022, both parties appeared before the Deputy Registrar when the matter was certified ready for hearing. The Deputy Registrar fixed the matter for hearing on October 25, 2022 on which date the respondent was absent, without any explanation.
6. From the foregoing, it is evident that the Respondent's statements as contained on the face of the Notice of Motion are not supported by the court record. Of note is that the date of October 25, 2022 was taken by consent of the parties and there was therefore no need for further notice to the respondent.
7. Flowing from the foregoing, no valid reason has been given as to why the court should exercise its discretion in favour of the Respondent.
8. Consequently, the application dated January 19, 2023 is dismissed with costs to the claimant.
9. The respondent may file final submissions on the claim within the next seven (7) days from the date of this ruling.
10. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 9TH DAY OF FEBRUARY, 2023

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JUDGE

Appearance:

Mr. Kibera for the Claimant

Mr. Waweru for the Respondent

