



**Matunda v Simba and Simba Advocates (Cause E226 of 2022)
[2023] KEELRC 1386 (KLR) (31 May 2023) (Ruling)**

Neutral citation: [2023] KEELRC 1386 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E226 OF 2022**

J RIKA, J

MAY 31, 2023

BETWEEN

NIMROD ODONGO MATUNDA CLAIMANT

AND

SIMBA AND SIMBA ADVOCATES RESPONDENT

RULING

1. The Claimant is an Advocate of the High Court of Kenya.
2. He was engaged as such by the Respondent Law Firm, on March 23, 2017.
3. He was summarily dismissed on July 30, 2020.
4. He filed the Statement of Claim dated April 8, 2022, seeking orders of reinstatement or compensatory damages.
5. The Respondent entered Memorandum of Appearance through the Law Firm of CSA Advocates LLP, on May 10, 2022.
6. The Respondent did not however, file its Statement of Response within 21 days of service. Rule 13 [1] of the *Employment and Labour Relations Court [Procedure] Rules 2016*, requires that if a Party intends to respond to a Statement of Claim, the Party shall within 21 days from the date of service, enter Appearance and file and serve a Statement of Response.
7. The Claimant filed an Application dated June 21, 2022, asking the Court to proceed on formal proof.
8. The Application was allowed on July 20, 2022, and formal proof scheduled for January 24, 2023.
9. The Respondent filed an Application on the eve of the formal hearing, January 23, 2023, seeking leave to file the Statement of Response out of time, and the Statement of Response dated July 13, 2022, filed on July 23, 2022, be deemed as duly filed and served.



10. The only reason given in explaining delay, is that the Respondent had voluminous documentation in responding, and it took time to compile the documents.
11. The Claimant is opposed to the Application. He filed his Replying Affidavit, sworn on 31st of January 2023. His position is that the Respondent has not given a plausible reason for delay. The Statement of Response on record was filed out of time, and without the leave of the Court. Nothing stopped the Respondent from filing the Statement of Response first, and filing the voluminous documents later. Delay of 60 days has not been explained. The Application has no merit and should be dismissed with costs.
12. Parties agreed to have the Application considered and determined on the strength of their Affidavits and Submissions. They confirmed filing and exchange of Submissions at the last mention on March 2, 2023.

The Court Finds: -

13. The Respondent offered on January 24, 2023, to pay throw away costs to the Respondent, if the Application is granted.
14. All the Parties are, Advocates and Officers of the Court. They are familiar with the procedural law, which governs the proceedings of this Court. They are also familiar with the overriding objective in judicial service, which is the administration of substantive justice.
15. On procedure, the Court does not think the Respondent, which is a reputable Law Firm, gave convincing reasons for delay in filing the Statement of Response. The Claimant correctly submits that the Respondent could have filed the Statement of Response first, and supply the volumes of documents later. Rule 14 [10] of the *E&LRC [Procedure] Rules, 2016*, allows a Party, who has not filed all documents as part of its Pleadings, to file and serve the Party such documents, at least 14 days before the case is set down for hearing. There was no reason for the Respondent to delay its Response, on account of the time taken to compile its documents.
16. On the need to administer substantive justice, the Court notes that the Respondent has already filed its Statement of Response and Documents albeit outside the prescribed timelines. The Respondent entered appearance within the stipulated time, which would indicate a willingness to respond to the Claim. The Respondent has furthermore, offered to pay throw away costs to the Claimant.
17. The *Employment Act* under Section 47[5], imposes the obligation on the Employer to justify reasons for termination. The Claimant seeks the primary remedy of reinstatement, and in the view of the Court, it is important that the Respondent is allowed the opportunity to justify termination, and the Claimant allowed the opportunity to argue his case for reinstatement or payment of maximum compensation and other damages. This can only be achieved after hearing both Parties.
18. The Respondent shall honour its offer for payment of throw away costs to the Claimant.

It is Ordered: -

- a. The Application filed by the Respondent dated January 23, 2023 is allowed.
- b. The Respondent shall within 14 days of delivery of the Ruling herein, pay to the Claimant throw away costs of Kshs. 30,000.

Dated, signed and released to the Parties at Nairobi, via e-mail, under Practice Direction No 6 [2] of the *Electronic Case Management Practice Directions, 2020*, this May 31, 2023.



James Rika

Judge

A handwritten signature in blue ink, consisting of a stylized 'J' followed by a series of loops and a horizontal line.

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