



Muriithi v Kenya Cooperative Coffee Exporter Limited (Cause E185 of 2022) [2023] KEELRC 1295 (KLR) (31 May 2023) (Ruling)

Neutral citation: [2023] KEELRC 1295 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E185 OF 2022**

J RIKA, J

MAY 31, 2023

BETWEEN

ERICK KEITH MURIITHI CLAIMANT

AND

KENYA COOPERATIVE COFFEE EXPORTER LIMITED RESPONDENT

RULING

1. The claimant moved the court to have the claim heard by way of formal proof, on November 24, 2022.
2. His position was that the respondent, having been served with the notice of summons and statement of claim, had failed to enter appearance and file a statement of response, in accordance with the *Employment and Labour Relations Court [Procedure] Rules, 2016*.
3. Formal proof hearing was scheduled for April 6, 2023.
4. The respondent filed an application under certificate of urgency, dated February 1, 2023. The application seeks that the proceedings are stayed; the order made for formal proof on November 24, 2022 is set aside; the respondent is granted leave to file its statement of response out of time; the draft statement of response annexed to the supporting affidavit is deemed as duly filed and served, upon payment of the requisite court fees; and costs be in the cause.
5. The application is founded on the affidavit of the respondent's Chief Executive Officer and Managing Director, Dr Jane Kathuku, sworn on January 19, 2023. Dr Kathuku also filed a supplementary affidavit, sworn on February 16, 2023.
6. The main ground in support of the Application, is that at all times, the claimant served court summons upon the Cooperative Bank of Kenya Limited, and not the respondent.
7. The claimant opposes the application through his replying affidavit, sworn on the February 7, 2023. He does not deny that he served court summons upon the Cooperative Bank of Kenya Limited. He



explains that he did so, because all along, the unlawful acts against him, upon which this claim is brought, were orchestrated by the Cooperative Bank Limited, and not by the respondent.

8. Parties agreed to proceed by way of written submissions, which they confirmed to have filed and exchanged at the last mention, on March 21, 2023.

The Court Finds: -

9. The choice made by the claimant, to serve the Cooperative Bank, instead of the respondent, appears to the court, quite strange.
10. He explains that the bank orchestrated unlawful actions taken against him by the respondent. Does this justify service on the bank? The bank did not employ him. It is not a party to the claim. It is a separate legal entity from the respondent. If there was a cause of action against the bank, the claimant ought to have joined the bank to the claim, not serve the bank with the summons.
11. The claimant admits he did not serve the respondent. It is not necessary to go into the rules on service on a corporate entity under the *Employment and Labour Relations Court [Procedure] Rules, 2016*; the claimant concedes he did not serve the respondent at all.

It Is Ordered: -

- a. The order issued on November 24, 2022 scheduling the claim for formal proof hearing is set aside.
- b. The respondent is granted unconditional leave to respond to the claim.
- c. The draft statement of response shall be deemed to have been properly filed and served, upon payment of the requisite court fees.
- d. Costs in the cause.

DATED, SIGNED AND RELEASED TO THE PARTIES VIA E-MAIL AT NAIROBI, UNDER PRACTICE DIRECTION NO. 6 [2] OF THE ELECTRONIC CASE MANAGEMENT PRACTICE DIRECTIONS, 2020, THIS 31ST DAY OF MAY 2023.

James Rika

Judge

