



**Coast Mail Company Limited v Hussein (Appeal E069 of 2022)
[2023] KEELRC 1202 (KLR) (11 May 2023) (Ruling)**

Neutral citation: [2023] KEELRC 1202 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
APPEAL E069 OF 2022**

**M MBARŪ, J
MAY 11, 2023**

BETWEEN

COAST MAIL COMPANY LIMITED APPELLANT

AND

SAKINA KAVOCHI HUSSEIN RESPONDENT

RULING

1. The appellant filed application dated October 13, 2022 under the provisions of Rule 8, 13(5) and 17 of the Employment and Labour Relations Court (Procedure) Rules, Section 1A, 1B, 3A of the Civil Procedure Act, Order 50, Order 5 rule 1 of the Civil Procedure Rules and Articles 50 and 159 of the Constitution and seeking for orders that;
 1. Spent.
 2. Spent.
 3. There be stay of the ruling delivered on October 6, 2022 in respect of Mariakani ELRC No E022 of 2021 pending hearing and determination of the instant application and the appeal.
 4. Costs of this application be provided for.
2. The application is supported by the Affidavit of Mwanaamina Abdalla the human resources manager of the appellant on the grounds that on 23rd and April 25, 2022 the appellant forwarded its Memorandum of Response to the registry through email and was informed that the same was bulky and requested to present the same physically at the registry. The appellant complied but was asked to seek leave to file the pleadings out of time. counsel attended court on June 15, 2022 but his call dropped and when he re-joined court, the matter had been called out and his application dismissed through a ruling delivered on October 6, 2022.



3. The appellant also avers that there is a good defence to the matter before court over the alleged unfair termination of employment after the respondent resigned from employment and is therefore not entitled to compensation and the appellant should not be condemned unheard.
4. In response, the respondent filed Replying Affidavit and avers that upon filing a Memorandum of Claim on November 25, 2021 the appellant was served on November 29, 2021 and despite service within time, only a Memorandum of Appearance was filed on January 10, 2022. No response was filed.
5. The matter came up for mention on May 11, 2022 when both counsels appeared and by consent the appellant was granted leave to file and serve responses out of time and within 14 days but there was no compliance and the instant application is only meant to delay the course of justice. The averments by the appellant that there was effort to file bulky documents which were not accepted by the registry is not supported by any evidence. the delay to file responses is not explained and the application seeking to re-open the matter before the lower court should be dismissed with costs.
6. Both parties attended and agreed to file written submissions.
7. The appellant submitted that application dated September 25, 2022 seeking to extend time to file a response out of time was filed before the lower court in Mariakani ELRC No 022 of 2021 through a ruling delivered on October 6, 2022 but the appellant as the respondent has a good defence and seek to be heard on the merits. The response was not filed in good time after the registry staff declined to accept the bulky documents filed by the respondent and after directions to file physical records hence denying the appellant a fair chance to be heard and the application herein should be allowed to have the appellant heard on their case on merit.
8. The respondent submitted that the appellant was at all material times aware of the right to attend court and defend the claim and on May 15, 2022 was allowed by consent to file responses out of time but failed to comply. Application seeking to file response out of time was dismissed on good grounds and the instant application is only meant to delay access to justice for the respondent and should be dismissed with costs. The appellant is not justified to enjoy the court discretion after failing to comply with the directions of court as held in **Nicholas Kiptoo arap Korir Salat v IEBC & 7 others* [2014] eKLR.
9. In the ruling of the learned magistrate delivered on October 6, 2022 there was a finding that the appellant failed to adhere to directions given on various dates especially on the May 15, 2022 when time was extended to allow filing of responses and documents. The Hon Magistrate held that;

“...I have not found plausible explanation for the respondent’s [appellant] failure to file her response to the claim on time in keeping with rule 13(1) of the rules aforementioned or within the extended time as directed on May 11, 2022. She cannot blame the registry for rejecting pleadings which she was submitting for filing out of time on June 14, 2022. The registry would have been in contempt of the court orders issued on May 11, 2022. But even if it were true that the pleadings were refused on June 14, 2022, there is no explanation why she had to wait until after 3 months to move the court.”
10. As correctly pointed out by the Hon Magistrate, on the chronology of events outlined by the appellant, there was court attendance on June 15, 2022 but the call dropped. A hearing date was allocated for October 6, 2022 but the appellant had not filed a response. There was also no attendance in court to cross-examine or represent the appellant’s interests.
11. Where indeed the appellant was in court on June 15, 2022 and the call dropped, until the matter came up in court again on October 6, 2022 the interim period is not accounted for. What did the appellant



- do after failing to rejoin the court session? What action was taken to secure the appellant's rights to a hearing?
12. That addressed, going back to the finding by the Hon. Magistrate that the appellant failed to file responses in good time and that She cannot blame the registry for rejecting pleadings which she was submitting for filing out of time on June 14, 2022. The registry would have been in contempt of the court orders issued on May 11, 2022, filing of pleadings is an administrative matter addressed at the registry but the right to reject or accept pleadings, documents or any other matter filed in time or out of time is a judicial function. The registry staff cannot lock doors and tell a litigant to go away with their documents. Such mandate rests with the judicial officer.
 13. The court staff placed at the registries cannot send a litigant away with their documents on the basis that they have been filed late. Also it cannot be a case that if they accept such documents there is contempt of court. such responsibility cannot be placed with staff at the registry. To do so would be to place a heavy burden for registry staff to determine which documents to accept or reject and hence deny a litigant a fair chance to argue their case in court before a judicial officer or a judge. Such responsibility would place registry staff at loggerheads with litigants' every time a documents is sought to be filed.
 14. The upshot of it would be to impede access to justice contrary to Article 48 of the Constitution.
 15. Whether a document is filed out of time or not should be addressed by the presiding Judicial Officer immediately such matter comes up in court.
 16. In this case, upon the Hon Magistrate's directions on May 15, 2022 the appellant was bound by the court directions to file responses and documents within 14 days. The reasons why there was no compliance had to be addressed with the presiding judicial officer in court and not outside court at the registry. The rejection of pleadings sought to be filed by the appellant on June 14, 2022 effectively denied the appellant a fair chance to attend and be heard on the merits. Had this right been secured, upon the court being seized of the matter on October 6, 2022 nothing would have stopped the presiding judicial officer from issuing directions to expunge such records and proceeding as found necessary and appropriate.
 17. Justice would otherwise be extremely expensive where a party attends court and is stopped on their efforts at the registry to avoid being in contempt of court. the judicial officer would effectively be denied access to pleadings which would otherwise have been addressed on the merits and where there is no good cause, remove them from the record. Where there is good cause, hear the matter on the merits. That is what access to justice entails. Giving each party a fair chance to be heard at the earliest.
 17. Employment and labour relations proceedings regulated under the Employment and Labour Relations Court (Procedure) rules, 2016 must be read together with the constitutive Act of the Court, the Employment and Labour Relations Court Act, 2011 that the principle objectives for the court under Section 3 thereof that;
 - (1) The principal objective of this Act is to enable the Court to facilitate the just, expeditious, efficient and proportionate resolution of disputes governed by this Act.
 - (2) The Court shall in the exercise of its powers under this Act or the interpretation of the rights of individuals and parties, seek to give effect to the principle objective in subsection (1).
 - (3) The parties and their representatives, as the case may be, shall assist the Court to further the principal objective and, to that effect, to participate in the proceedings of the Court and to comply with directions and orders of the Court.



18. Taking into account the findings above, access to justice being part of the Bill of Rights, the appellant having moved this court seeking to be heard on the merits, ruling delivered on October 6, 2022 with respect to Mariakani ELRC No022 of 2021 is hereby set aside and the appellant allowed 14th days to file responses out of time. The appellant is sorely not an innocent party for failing to address the lapse from May 15, 2022 until October 6, 2022 and shall meet costs due to the respondent in these proceedings.
19. Accordingly, application dated October 13, 2022 is hereby allowed, the appellant has 14 days from the date hereon to comply with Rule 13 of the *Employment and Labour Relations Court (Procedure) Rules*, 2016 with respect to Mariakani ELRC No 022 of 2021; meet the respondent's costs herein.
20. Matter shall be remitted back to the trial court.

DELIVERED IN OPEN COURT AT MOMBASA THIS 11TH DAY OF MAY, 2023.

M. MBARŪ

JUDGE

In the presence of:

Court Assistant: Japhet Muthaine

..... and

