



**Sochin v Catholic University of Eastern Africa (Cause
301 of 2019) [2023] KEELRC 1980 (KLR) (13 July 2023) (Ruling)**

Neutral citation: [2023] KEELRC 1980 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 301 OF 2019
NZIOKI WA MAKAU, J
JULY 13, 2023**

BETWEEN

DR ROSA SOCHIN CLAIMANT

AND

CATHOLIC UNIVERSITY OF EASTERN AFRICA RESPONDENT

RULING

1. The Respondent/Applicant filed a Notice of Motion Application dated May 22, 2023 seeking for Orders:
 - i. Spent
 - ii. That the Honourable Court be pleased to arrest and/or stay of the proceedings herein, particularly directions that parties proceed to file submissions, pending the hearing and determination of this application.
 - iii. That the Honourable Court be pleased to set aside the record of the proceedings of May 22, 2023 and the subsequent orders made thereon in particular the order closing the Respondent's case.
 - iv. That upon granting of prayer 3 above, the Honourable Court be pleased to set down the matter for hearing of the Respondent's sole witness (the Human Resource Manager of the Catholic University of Eastern Africa).
 - v. That this Honourable Court does issue the Respondent with the earliest hearing date convenient to the parties for the purpose of taking oral evidence from the aforesaid witness.
 - vi. That the costs of this Application be in the cause.



2. The Application was premised on grounds that when the suit came up for hearing of the Respondent's case on May 22, 2023, it was number 1 on the Cause List of this Honourable Court. That the Respondent's Counsel logged into the court session from 8:30am using the link provided and was in the waiting lobby but was not allowed into the session. That at the same time, the Respondent's Counsel office was experiencing slow internet connectivity and he had to severally log out and back into the session in an attempt to be admitted by the Court. That however when Counsel was finally admitted into the meeting at around 9:10am, the Honourable Judge had already called out the file and issued directions that parties file submissions and the matter to be mentioned on June 26, 2023 to confirm the filing.
3. Further, it was asserted that it is only fair to give the Respondent a chance to defend its case. That the Claimant will not suffer any prejudice as all her witnesses testified whereas the Respondent was apprehensive it will suffer irredeemable loss and prejudice by being condemned unheard if this suit is not determined on its merit. That the Respondent was willing to avail its sole witness to testify as may be directed by Court and that the Application herein had been made timeously.
4. The Application was also supported by the Affidavit of Mr Cedric Wasike, who further averred that the Order of this Court directing that the Respondent's case be closed is prejudicial to the Respondent's right to fair hearing under the Constitution of Kenya. That the principle of equality of arms dictates that each party must be granted a reasonable opportunity to present its case including evidence, without any disadvantage to one party at the cost of any other party.
5. The Claimant did not oppose the Application. In its submissions, the Respondent/Applicant submitted that the main issue for determination by this Court is whether it should reopen the hearing of the Respondent's case. On the applicable laws, it cited Rule 26(2) of the Employment and Labour Relations Court (Procedure) Rules, 2016 which provides that the Court shall not reopen a hearing unless, for sufficient reasons, it considers it fit to do so. It also cited section 16 of the Employment and Labour Relations Court Act which provides that the Court shall have the power to review its judgments, awards, orders or decrees in accordance with the Rules. Further, Rule 25(4) of the Employment and Labour Relations Court (Procedure) Rules provides that:

The Court shall conduct the hearing in a manner it considers most suitable to the just handling and recording of proceedings and shall, if appropriate, avoid legal technicalities and formalities.
6. The Respondent/Applicant cited the case of Njoroge & Musyoka Advocates & 3 others v Evelyne Wamai [2022] eKLR wherein the Court in determining what constitutes sufficient cause, cited with approval the holding of the Supreme Court of Uganda in Famous Cycle Agencies Ltd & 4 Others v Masukhalal Ramji Karia [1995] IV KALR that sufficient cause depends upon the circumstances of each case. It was the Applicant's submission that its absence in court when the matter was called out on May 22, 2023 was not caused by negligence or lack of due diligence, especially considering that the hearing was listed as the first in the cause list, which gave it or its Advocate very little to no room to properly respond to the unfortunate turn of events.
7. It further submitted that this Court is clothed with wide jurisdiction to re-open the hearing of the Respondent's case to allow the Respondent exercise its constitutional right to fair hearing. That a similar application for reopening of a matter of Defence hearing arose in the case of Edward Waka Osare v Inter Security Limited [2021] eKLR after the Court had closed the same and the Court allowed the reopening of the respondent's case for hearing and determination on merit after finding that the same was to avoid a miscarriage of justice by condemning the respondent unheard. The Applicant



submitted that the Application being unopposed and having demonstrated there is sufficient reason to re-open the matter for hearing of the Respondent's case, this Court ought to exercise its discretion and allow the Application as prayed.

8. The Respondent/Applicant presumes that merely because the Claimant does not oppose the motion that it ought to be granted. On one hand the Applicant asserts that they were waiting in the lobby from 8.30am but were not allowed in and on the other hand indicate there was poor/slow internet connectivity on their end. It is clear any allegations that they were online from 8.30am is a blatant lie as the parties who were in the lobby were all allowed in a few minutes to the time the Court called out the first case. No one was in the lobby by the time the case was called as the Court started the day late with even an apology being offered to the parties in Court. As such, the Respondent's assertions are fallacious and must be dispensed with as ought. Application is dismissed albeit with no order as to costs as the Claimant did not oppose it. Directions will follow on the filing of final submissions as the case will not be reopened.

It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 13TH DAY OF JULY 2023

NZIOKI WA MAKAU

JUDGE

