



Natade v County Government of Turkana & 2 others (Employment and Labour Relations Cause E013 of 2023) [2023] KEELRC 3186 (KLR) (30 November 2023) (Ruling)

Neutral citation: [2023] KEELRC 3186 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KITALE
EMPLOYMENT AND LABOUR RELATIONS CAUSE E013 OF 2023
MA ONYANGO, J
NOVEMBER 30, 2023**

BETWEEN

DR. LOLELEA JACOB NATADE CLAIMANT

AND

COUNTY GOVERNMENT OF TURKANA 1ST RESPONDENT

THE COUNTY SECRETARY/HEAD OF COUNTY PUBLIC SERVICE BOARD 2ND RESPONDENT

TURKANA COUNTY PUBLIC SERVICE BOARD 3RD RESPONDENT

RULING

1. The application dated 25th July 2023 has been brought by the Respondent seeking that the orders made by this court on 30th May 2023 certifying that the instant Claim is ready for hearing as an undefended claim be set aside and the directions given on the 24th July 2023 as to the hearing of this suit be stayed. The Applicant has also sought that it be granted leave to respond to this suit and the draft Response to the Memorandum of Claim annexed to the application be deemed to be properly on record upon payment of the requisite court filing fees.
2. The Applicants grounds are that the Claimant herein served the suit together with the Notice to enter appearance upon the Respondents on the 9th May 2023; that the Respondents sent their notices of appointment to their clerk in Eldoret for filing of the Notices on 24th May 2023 where they were informed that the documents were to be filed in Kitale via mail; that the Respondents were therefore forced to change the drafting of the Notices of appointment to indicate Kitale ELRC and dated them 25th May 2023; that by calculation, the summons to enter appearance were served upon the Respondents on the 9th March 2023 and the Respondents had 15 days to put in their notices of appointment which took the date to 25th May 2023; that consequently, the Respondents had 14 days from the date of filing the notices of appearance to put in their Statement of Response.



3. The Respondents further state that at the time the court gave its orders on 30th May 2023, they still had 10 days to put in their response in line with the provisions of Order 7 Rule 1 of the [Civil Procedure Rules](#); that the Claimant failed to serve either the Respondent or their advocates with the mention date hence the Respondents failure to attend court for the mention.
4. It is further contended that the failure by the Claimant and the registry to serve the mention notice to the Respondents has been unfortunately borne by the Respondent who were forced to conduct a hearing on 24th July 2023 without their responses being on record.
5. The Respondents contend that unless this court sets aside the orders issued on 30th May 2023 and grants a stay of directions issued on the 24th July 2023, they will suffer great injustice without getting an opportunity to be heard.
6. The application is opposed. The Claimant filed a Replying Affidavit sworn by the himself on 21st September 2023 where he deposes that the Respondents were duly served with the Memorandum of Claim and other accompanying documents on 9th May 2023. He avers that the Respondents then filed a Notice of appointment dated 25th May 2023 and that when the matter came before court on 30th May 2023 for mention for directions, the court ordered that the matter proceed undefended with a rider that the Respondents be served with a hearing notice. The Claimant further state that in compliance with the order, the Respondents were served with the hearing notice dated 9th June 2023 for the hearing on 24th July 2023. It is stated that the Respondents filed a Notice of preliminary objection dated 15th July 2023 and that on the 24th July 2023, the court considered the preliminary objection and directed that the matter proceeds to hearing. It is the Claimant's case that the instant application has been caught up by unreasonable delay as the matter has already advanced and that the Claimant is keen to have the matter concluded.
7. The Claimant further aver that the application as filed is an abuse of the court process as the orders sought to be set aside have been overtaken by events since direction on its disposal have already been taken; that the Respondents were indolent in the manner in which they handled the suit as the date of filing the instant application is inordinate and no plausible explanation for the delay has been given.
8. It is the Claimant's case that the draft defence raises no triable issues as the issues raised therein arose from the Claimant's oral testimony in court in the initial suits related to this matter.
9. From the application before me and response filed, the only issue the court must deal with is the question as to whether sufficient reasons have been laid before this court to warrant setting aside of the orders of the court of 30th May 2023 and 24th July 2023.
10. Section 3A of the [Civil Procedure Act](#) provides for the inherent powers of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the court process.
11. In the case of [Shah vs Mbogo & Another](#) (1967) EA 116, it was held that:

“The discretion to set aside an ex parte judgment is intended to be exercised to avoid injustice or hardship resulting from accident, inadvertence or excusable mistake or error but it is not designed to assist a person who has deliberately sought whether by evasion or otherwise to obstruct or delay the cause of justice”.
12. Flowing from the above, it is evident that the court has discretion to set aside its orders which discretion is intended to avoid injustice or hardship resulting from an accident, inadvertence or excusable mistake or error but not to assist a person who deliberately seeks to obstruct or delay the course of justice.



13. In the instant case, I find that it would be unfair to condemn the Applicants unheard considering the circumstances of this case.
14. I have perused the Response to the Memorandum of Claim annexed to the application herein and I find that the Respondents have a good defense to the Claim.
15. The Court will therefore exercise its discretion and grant the application dated 25th July 2023 in the following terms:
 - i. The orders of this court made on the 30th May 2023 certifying this matter ready for hearing as an undefended claim be and are hereby set aside
 - ii. The orders of this court made on 24th July 2023 are set aside and the Respondents granted leave to file defense to the Claim.
 - iii. The Respondents shall pay throw away costs of Kshs. 10,000 to the Claimants.
 - iv. Hearing date to be taken at the time of delivery of ruling.
16. The orders herein apply to Kitale ELRC E010 of 2023, Kitale ELRC E011 of 2023, Kitale ELRC E012 of 2023 and Kitale ELRC E014 of 2023.

DATED, DELIVERED AND SIGNED AT ELDORET THIS 30TH DAY OF NOVEMBER, 2023.

M. ONYANGO

JUDGE

