



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO.E469 OF 2020

(Before Hon. Lady Justice Anna Ngibuini Mwaure)

JASPER ODHIAMBO LUBETO.....CLAIMANT

VERSUS

MOUNT KENYA UNIVERSITY.....RESPONDENT

RULING

1. The applicant's application is an order to set aside its directions given on 10th June, 2021 directing that this matter proceeds for formal proof hearing on 29th September, 2021 in light of the Respondents not having filed their response to the claim.

2. That the court be pleased to enlarge/extend time for the Respondent to file their response to claim and further pleadings in support therein.

The prayer is made in accordance to Rule 13 (5) of the Employment and Labour Relations (Court) Rules.

3. The applicant avers that on 7th September, 2020 they were served with the suit papers. They claim due to to the lock down of the globe due to Covid pandemic the Respondent failed to address some issues in the institution and so were not able to file their response.

4. They further aver that upon receipt of demand letter on 18th December, 2019 they paid Claimant Kshs.151,200/= for September, 2018 semester and promised to pay the remaining dues.

The Applicant says the Claimant never responded to the Respondent's letter of 9th January, 2020 and so believed the Claimant was agreeable to their proposal.

5. He says the matter has now been set for formal proof and such directions would be prejudicial to the Respondent.

He says the failure to put a response was occasioned by factors beyond its control.

6. The Claimant on the other hand avers the claims by the Respondent are false and border on perjury where they claim they responded to the Claimant's demand letter and paid him Kshs.151,200/=. He says he was not paid any such amount.

The Claimant prays the application be dismissed.

DECISION

7. The claim was filed and served on the Respondent 1st September, 2020 and served on 7th September, 2020. The Respondent failed to put in a response until the case was marked to proceed for formal proof on 29th September, 2021.

8. The court is seized of the fact that the court must as much as possible allow parties to be heard and to ventilate their issue. In the **CASE OF GULF FABRICIATORS VS COUNTY GOVERNMENT OF SIAYA (2020) eKLR** it was held that justice is better served when both parties to a dispute are accorded an opportunity to be heard on merits to enable each of the parties ventilate their issues, unless it is demonstrably shown that the party in question has sought to delay the cause of justice.

9. That notwithstanding the law is not enacted in vain. Section 13 of the Employment and Labour Relations (Court) Rules provide within 21

days of service of statement of claim, Respondent will put an appearance and a response.

10. The Respondent upon service filed a notice of appointment of an advocate on 26th April, 2021 and appointed Adera & Kenyatta Advocate as its advocate.

Indeed by 12th January, 2021 they had also been served with a notice of mention but did not respond.

11. The Respondent sat on his right for over one year to put a response and to seek courts leave to file the response out of time. Actually it would appear Respondent only took steps when Claimant was granted a date for formal proof.

12. So it is not fair and just to allow a party to sit on time indefinitely when the law provides for clear timelines on when to file pleadings.

Pleadings cannot be open ended indefinitely and it comes a time when the court must say "it is too much."

I am not convinced this is a matter where I should set aside the courts order to proceed for formal proof.

I therefore dismiss the Respondent's application and order formal proof to proceed.

Claimant is referred to the Deputy Registrar on 10th March, 2022 to take a date for formal proof.

Orders accordingly.

Delivered, dated and signed in Nairobi this 24th day of February 2022.

ANNA NGIBUINI MWAURE

JUDGE

ORDER

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with **Order 21 Rule 1 of the Civil Procedure Rules**, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court has been guided by Article 159(2) (d) of the Constitution which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of **Section 1B** of the **Procedure Act (Chapter 21 of the Laws of Kenya)** which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

A signed copy will be availed to each party upon payment of court fees.

ANNA NGIBUINI MWAURE

JUDGE