



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

CAUSE NO. 387 OF 2018

PROF STEPHEN OKEYO

CLAIMANT

v

GREAT LAKES UNIVERSITY OF KISUMU

RESPONDENT

RULING

1. For determination is a Motion dated 22 June 2021 by the Respondent seeking orders:

(1) ...

(2) ...

(3) The proceedings of the 20th January 2021, the ensuing judgment of this Honourable Court dated and delivered on 14th April 2021 and any further or other orders made pursuant to the judgment be reviewed and set aside and the matter be heard afresh.

(4) Costs of this application be provided for.

2. The primary grounds upon which the Motion were anchored were that there was an error apparent on the face of the record and that the then advocate on record did not give the Respondent notice that he no longer wanted to represent it.

3. It was also asserted that there was a plausible defence and which the Court ought to give the Respondent a chance to present.

4. According to the Respondent, it had not been served with Summons, and that an Amended Statement of Claim had been filed without leave after the time allowed had expired.

5. The Respondent also contended that the decretal sum was so high that it would be occasioned irreparable loss if the judgment were to be executed.

6. The Claimant filed Grounds of Opposition to the application on 1 July 2021, wherein it was asserted that the application was not properly on record for failure to comply with Order 9 Rules 5 and 6 of the Civil Procedure Rules.

7. On 24 November 2021, the Claimant filed a replying affidavit in opposition to the application.

8. In the affidavit it was deposed that the application did not meet the threshold for review, and that the Respondent had not demonstrated the emergence of new and important matters of evidence, and that the application was more of an appeal against the judgment of the Court.

9. The Claimant's affidavit prompted the Respondent to file a supplementary affidavit on 14 December 2021.

10. The Respondent filed submissions on the same day.

11. The Court has considered the Motion, affidavits and submissions.

Service of Summons

12. It is not in dispute that the Respondent entered a conditional appearance on 21 January 2019 and filed a Notice of Appointment of Advocates on the same day.

13. On 22 January 2019, the Claimant causes to be filed an affidavit of service attesting to service of documents including Notice of Summons upon the Respondent on 18 December 2018.

14. Without the deponent of the affidavit being challenged on the service, the Court is satisfied that valid and proper service was effected upon the Respondent at the initial stage.

15. The Court also notes that upon the amendment of the Memorandum of Claim, the current Respondent caused a Response to the Amended Memorandum of Claim to be filed.

16. It cannot be that the Respondent was not aware of the proceedings to claim improper or invalid service.

Amended Statement of Claim

17. The Respondent also sought review and or setting aside of the judgment on the ground that the Amended Statement of Claim was filed outside the time given by the Court and without obtaining further leave.

18. The record shows that the Claimant was given 14-days from 19 March 2019, within which to file and serve an Amended Statement of Claim.

19. The Amended Statement of Claim was filed on 15 May 2019, outside the 14-days granted by the Court.

20. When the parties appeared for directions on 16 July 2019, the Respondent did not object to the Amended Statement of Claim.

21. The Respondent filed a Response to the Amended Memorandum of Claim on 16 July 2019. It did not dispute the validity of the Amended Memorandum of Claim in the Response.

22. The Respondent did also not raise the issue during appearances on 26 February 2020 or 6 October 2020 when the hearing date was scheduled.

23. The Court finds this ground was an afterthought and even if it was merited, the Court notes that the amendments to the Statement of Claim did not go to the substance of the Claimant's case. It merely deleted the description of the Respondent by removing the words, *the Governing Council*.

Opportunity to be heard

24. The Deputy Registrar fixed the hearing of the Cause on 6 October 2020 (hearing was scheduled for 20 January 2021).

25. A hearing notice was served upon the Respondent on 12 January 2021.

26. On 19 January 2021, the then advocates on record for the Respondent, Antony Kago & Co. Advocates filed an application seeking leave to cease from acting.

27. When the Cause was called out for hearing on the scheduled date, it turned out that the Respondent had not served the application on the Claimant until 2-days to the hearing. He had also not served his client.

28. Coupled with the late filing of the application to cease from acting which did not disclose when the advocate/client relationship went south, the Court declined to entertain the application and directed that the hearing proceeds.

29. Without courtesy or ceremony, Mr Kago opted to leave the hearing. The Court had no option but to proceed with the hearing.

30. The Respondent cannot legitimately claim that it was not afforded an opportunity to be heard on its defence when an advocate on record unceremoniously left the virtual Court despite not securing leave to cease acting.

Exercise of discretion

31. The Respondent then moved the Court seeking the orders already alluded to above. The orders require an exercise of the Court's discretion.

32. When the Motion was placed before the Court on 28 June 2021, it allowed interim stay of execution on condition that the Respondent deposits half of the decretal sum into Court within prescribed timelines.

33. The Respondent did not comply with the condition and requested for more time to take instructions. The failure to comply made the Court to vacate the interim stay order.

34. The Respondent's conduct does not merit an exercise of the Court's discretion.

Conclusion

35. For the above reasons, the Court declines to exercise its discretion in favour of the Respondent. The Motion is dismissed with costs.

DELIVERED THROUGH MICROSOFT TEAMS, DATED AND SIGNED IN NAIROBI ON THIS 23RD DAY OF FEBRUARY 2022.

RADIDO STEPHEN, MCI Arb

JUDGE

Appearances

For Claimant Mr Washika instructed by Wafula, Washika & Associates Advocates

For Respondent Mr Otieno instructed by Owiti, Otieno & Ragot Advocates

Court Assistant Chrispo Aura