



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

ELRC CAUSE NO. E414 OF 2020

ROBERT MAIKO KYAA.....CLAIMANT

VERSUS

INSPECTOR GENERAL,

NATIONAL POLICE SERVICE AND ANOTHER.....1ST RESPONDENT

HON. ATTORNEY GENERAL.....2ND RESPONDENT

RULING

1. The Notice of Motion Application dated 1st March, 2021 seeks an order that:-

1. *Leave be granted for entry of judgment herein in favour of the claimant in default of appearance.*
2. *That upon leave being granted, judgment be entered for the claimant as prayed in the Memorandum of Claim.*

2. The application is opposed vide grounds of opposition filed by **Amelia Chesiyana**, Senior State Counsel, Attorney General Chambers in which is clearly indicated that the respondent entered appearance in the suit and filed a memorandum of response to the suit. The respondent also filed list of documents dated 11/5/2021 and a witness statement dated 11/01/2021 was filed by the respondent.

3. The Employment and Labour Relations Court (**Procedure**) Rules, 2016 do not provide for the Court to enter judgment upon default of the respondent to enter appearance and file a defence to the suit.

4. The tested practice of the Court is for a claimant in respect of which a defence has not been filed to move the Court for a pre-trial conference pursuant to which a date for formal proof is granted in terms of Rule 15(3). The applicant did not follow this procedure under Rule 15(3) of the Employment and Labour Relations Court (**Procedure**) Rules.

5. In the present case, the respondent having filed a statement of response (allegedly) out of time and without leave of Court, the claimant ought to have moved the Court to strike out the pleadings filed out of time by the respondent and the matter to proceed to formal proof.

6. The present application is defective, misconceived and an abuse of Court process since the suit as it stands is clearly defended by the respondent and ought to proceed to a full trial upon conclusion of pre-trial procedures.

7. The application is accordingly, dismissed with costs in the cause.

DATED AND DELIVERED AT NAIROBI (VIRTUALLY) THIS 17TH DAY OF FEBRUARY, 2022.

MATHEWS N. NDUMA

JUDGE

Appearance

Mr. Were for claimant/Applicant

M/s Chesiyana for Respondent

Ekale – Court Assistant