



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

CAUSE NO. 79 OF 2019

KENYA BUILDING CONSTRUCTION, TIMBER

AND FURNITURE INDUSTRIES EMPLOYEES

UNION.....CLAIMANT

v

THOMAS & PIRON GRANDS LACS LTD.....RESPONDENT

RULING

1. On 18 December 2019, the Court struck out the Memorandum of Claim for lack of locus standi on the part of the Union because it did not have a recognition agreement with the Respondent to mandate it to sue on behalf of employees of the Respondent.
2. The Union felt aggrieved and it filed a motion dated 5 February 2020, seeking orders:
 - (1) ...
 - (2) THAT at the hearing of this application, this Honourable Court be pleased to vacate its orders made on the 15th January 2020 striking out the Memorandum of Claim herein dated 27th August 2019, reinstate the Claimants Memorandum of claim dated 27th August 2019.
 - (3) THAT upon vacating the order as prayed, this Honourable Court be pleased to grant the Claimant leave to file its replying affidavit to the Respondents Notice of Motion dated 28th October 2019 in terms of the draft replying affidavit annexed hereto.
 - (4) THAT costs be in the cause.
3. The grounds in support of the application were that a newly employed clerk of the Union had accepted service of the Respondent's application but filed it away without alerting the Legal office and that through inadvertence the Union had failed to file a replying affidavit to a motion by the Respondent dated 28 October 2019, thus leading to the striking out of the Memorandum of Claim; that the Grievants stood to suffer extreme prejudice and that the Union was willing to pay thrown away costs.
4. The Respondent's Human Resources Manager filed a replying affidavit in opposition to the motion on 27 February 2020.
5. In the affidavit, it was deposed that the Union was served and acknowledged service and that no proper reason had been advanced for failing to appear in Court on 18 December 2019.
6. The Union filed its submissions on 7 January 2022, while the Respondent filed its submissions on 1 February 2022.
7. The Court has given due consideration to the Motion, affidavits and submissions.
8. The Union seeks an exercise of the Court's discretion.
9. In allowing the motion to strike out the Memorandum of Claim, the primary reasons adverted to by the Court were that the application had been served and that despite the service, the union had failed to attend Court.
10. The Union has not denied service. It has asserted that a newly employed clerk filed away the motion without alerting the legal

