



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR
RELATIONS COURT AT NAIROBI
CAUSE NUMBER 840 OF 2016

BETWEEN

DAVID GITHENYA CHEGECLAIMANT

VERSUS

AMBOSELI INSTITUTE OF HOSPITALITY &

TECHNOLOGY LIMITED.....RESPONDENT

RULING

1. This Claim proceeded *ex parte*, and was closed on 8th July 2021.
2. The Respondent acknowledges service of the hearing notice, but explains that there was a mix-up in diarizing the date, because the Respondent's Advocates were moving offices.
3. Through the Affidavit of Nelson Mandela, Legal Clerk, sworn on 1st November 2021, the Respondent explains that Mandela failed to label litigation files properly, which resulted in the Advocate's failure to attend to the brief. The Advocate only came to learn that the matter had proceeded *ex parte*, upon perusing the Court file.
4. The Respondent applies for setting aside of the *ex parte* proceedings of 8th July 2021, and reopening of the hearing. The relevant Application is dated 1st November 2021.
5. The Claimant is opposed to the Application, relying on the Affidavit his Advocate Mildred K. Gakoi, sworn on 15th November 2021. She retraces the file history, highlighting other defaults on the part of the Respondent. She states that failure by the Respondent's Advocate to diarize the hearing date after service of the hearing notice, is inexcusable. The Application was filed 4 months after the hearing closed. The Claim was filed way back in 2016.
6. The Parties agreed to have the Application considered and determined on the strength of their Affidavits and Submissions. Ruling was scheduled for 1st April 2022, but was not ready owing to other official engagements.

The Court Finds: -

7. The reasons given by the Respondent for failure to attend hearing on 8th July 2021 are not persuasive.
8. Hearing notice was served upon the Respondent on 4th June 2021. The date ought to have been captured in the Respondent's Advocates' diary, on the 4th June 2021.
9. Mandela does not state the exact date he failed to label the litigation files properly, finding shelter in a general statement that, it was sometime in the month of June.
10. It is also clear that the Application has been filed after an inordinate delay.
11. Hearing proceeded on 8th July 2021 at 3.00 p.m. The Court made effort to have the Respondent's Advocate in Court. The Court closed

Respondent's case and directed that Parties file their Closing Submissions before 30th September 2021. The matter was scheduled for mention on 30th September 2021 with a view to issuing a date for delivery of the Judgment. Why should the Respondent apply to set aside *ex parte* proceedings 4 months after the close of the hearing?

12. Furthermore, this is the second time the Respondent failed to participate in the hearing of the Claim. Hearing had initially proceeded in the absence of the Respondent, on 19th May 2020, before Hon. Justice Ongaya. The Respondent subsequently made an Application dated 16th July 2020, for setting aside of *ex parte* proceedings.

13. The Court does not think it is helpful to the administration of justice, to have the kind of back-and-forth in the proceedings, the Respondent appears to espouse, through its serial defaults and subsequent Applications for a second chance. This Claim was filed in 2016, and must be brought to a closure.

IT IS ORDERED: -

a. The Application by the Respondent dated 1st November 2021 is declined with costs to the Claimant.

b. Parties shall file and exchange their closing submissions before 31st May 2022.

c. Mention on 17th June 2022 with a view to a scheduling of the Judgment date.

DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY, AT CHAKA, UNDER THE MINISTRY OF HEALTH AND JUDICIARY COVID-19 GUIDELINES, THIS 28TH DAY OF APRIL 2022.

James Rika

Judge