



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT NAIROBI**

**CAUSE NO. 1992 OF 2015**

**BETWEEN**

**BONIFACE KAMAMI MWANGANGI.....CLAIMANT**

**VERSUS**

**KIKIMA FARMERS COOPERATIVE SOCIETY LIMITED.....RESPONDENT**

**RULING**

1. Hearing of this Claim was slated for 4<sup>th</sup> day of February 2021, with the consent of the parties.
2. On 4<sup>th</sup> February 2021, the Claimant travelled from his home in Mbooni, while his Advocate travelled from Machakos to Nairobi for the hearing.
3. The Respondent asked for adjournment, alleging that its witnesses, who were its officials, had been suspended from duty by the director of cooperatives, and could not therefore testify for the Respondent.
4. The application for adjournment was declined and the Claimant gave evidence *ex parte*. The Court however indicated from the outset, that the Respondent would be granted another date for hearing of its witnesses. The Claimant therefore gave evidence and closed his case on 4<sup>th</sup> February 2021. Hearing of the Respondent's case was scheduled for 26<sup>th</sup> March 2021.
5. The Respondent filed an application dated 12<sup>th</sup> February 2021, seeking to have the *ex parte* hearing of 4<sup>th</sup> February 2021 set aside, and the Claimant recalled for cross-examination.
6. The application is supported by the affidavit of Danson Kisini Muema, Advocate for the Respondent, sworn on 12<sup>th</sup> February 2021. He states that the Respondent's officials were under suspension, and could not therefore be in Court on the hearing date. He adds that he could not proceed without their instructions. He had written to the Court and to the Advocate for the Claimant about his predicament, a day before the hearing.
7. The application is opposed through the affidavit of Duncan Nzioka Mbonzo, Advocate for the Claimant, sworn on 15<sup>th</sup> November 2021. He states that he received his counterpart's letter about the suspension of Respondent's officials, a day to the scheduled hearing. He had already prepared his witness for the hearing. The Respondent applied for adjournment which was declined, with the direction that the Claimant's case would proceed on the material day, with the Respondent's case TO be heard on 26<sup>th</sup> March 2021. There is no reason why the Advocate for the Respondent failed to cross-examine the Claimant. There is no reason to warrant recalling of the Claimant for cross-examination.

**The Court Finds: -**

8. The Court declined the Respondent's application for adjournment of the Claimant's case, but allowed the adjournment of the Respondent's case, on 4<sup>th</sup> February 2021.
9. The Advocate for the Respondent has not explained why he did not attend Court, and proceeded with the cross-examination of the Claimant, on 4<sup>th</sup> February 2021.
10. The Respondent's witnesses need not have been present, for Respondent's Advocate to cross-examine the Claimant.

11. The Court accommodated the Respondent, adjourning hearing of its case, while making it clear that the Claimant, who had travelled from Mbooni, had to proceed with his case.

12. It is preposterous for the Respondent's Advocate to submit that he could not proceed without instructions. He was, and still is, on record for the Respondent, and has the instructions of the Respondent. He has not applied to be discharged from the proceedings.

IT IS ORDERED: -

**a. The application filed by the Respondent dated 12<sup>th</sup> February 2021 is declined with costs to the Claimant.**

**b. A hearing date for the Respondent's case, to be obtained at the registry.**

**DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY, UNDER THE MINISTRY OF HEALTH AND JUDICIARY COVID-19 GUIDELINES, AT CHAKA, THIS 22<sup>ND</sup> DAY OF APRIL, 2022**

**JAMES RIKA**

**JUDGE**