



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO. 234 OF 2020

KEPHA ONYANGO AWINO.....CLAIMANT

VERSUS

KENYA HOSPITAL ASSOCIATION

T/A THE NAIROBI HOSPITAL.....RESPONDENT

RULING

1. The application dated 1st February, 2021 seeks to have the Statement of Response to the Statement of Claim filed on 29th January, 2021 be struck out and the Court to direct the suit to proceed to formal proof.
2. The application is premised on grounds that the suit was filed on 15th June, 2021 and same was served on the respondent on 3rd July, 2020. The respondent filed its Memorandum of Appearance on 3rd August, 2020 out of time and later filed its Statement of Response to the claim on 29th January, 2021. That no leave was sought before the filing of statement of response out of time, contrary to Rule 13(5) of the Employment and Labour Relations Court (Procedure) Rules 2016.
3. The respondent filed an application dated 17th February, 2021 seeking condonation for the late filing of its pleadings aforesaid.
4. The Court directed that the two applications be dealt with together as they dealt with the same subject matter.
5. The Court has considered the two applications and in particular considered and found that the delay by the respondent in the main suit to enter appearance and subsequently file the Statement of response to the suit is not inordinate.
6. That the constitutional imperative under Article 50(1) read together with Article 159(2) (d) is that disputes be resolved by the application of law in a fair and public hearing before a Court and that justice shall be administered without undue regard to procedural technicalities.
7. Granted Court rules are the hand maiden of the Courts in administration of justice but it cannot be gainsaid that rules are primarily made to ease but not to hinder substantive administration of justice.
8. The circumstances of this case leads me to the conclusion that the claimant in the main suit shall not suffer prejudice that cannot be remedied by way of costs if the Court enlarges time within which the statement of response is filed in this matter. The Court proceeds to grant the leave sought by the respondent and dismiss the application to strike out the statement of response filed in the matter. The suit to take its normal course. Costs in the cause.
9. The Court so orders.

DATED AND DELIVERED AT NAIROBI THIS 21ST DAY OF APRIL, 2022.

Mathews N. Nduma

Judge

ORDER

In view of the declaration of measures restricting court of operations due to the COVID-19 pandemic and in light of the directions issued by his Lordship, the Chief Justice on 15th March 2020, this ruling has been delivered to the parties online with their consent. They have waived

compliance with **Order 21 rule 1 of the Civil Procedure Rules** which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court has been guided by **Article 159(2)(d)** of the Constitution which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under **Article 48** of the Constitution and the provisions of **Section 18 of the Civil Procedure Act (chapter 21 of the Laws of Kenya)** which impose on this court the duty of the court, *inter alia*, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

Mathews N. Nduma

Judge

Appearances

M/s Okwiri for Claimant

Mr. Kamotho for Respondent

Ekale – Court Assistant