



Elolo v Tabu (Cause 636 of 2016) [2022] KEELRC 4016 (KLR) (29 September 2022) (Ruling)

Neutral citation: [2022] KEELRC 4016 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 636 OF 2016
J RIKA, J
SEPTEMBER 29, 2022

BETWEEN

LUCY ANDISI ELOLO CLAIMANT

AND

IRENE TABU RESPONDENT

RULING

1. This matter was heard in the absence of the respondent, on September 30, 2021. The respondent scheduled the hearing date, in the absence of the claimant.
2. The court delivered its Judgment in favour of the claimant, on January 28, 2022.
3. The respondent had on November 4, 2021 filed an application dated October 21, 2021, under certificate of urgency, which was placed in a holding file irregularly, without an order of the court, seeking to have the claimant recalled for cross-examination; the statement of response which had not been filed as at the time of the hearing admitted out of time; and the respondent allowed to respond to the claim.
4. The holding file seemingly, was opened because the original file was in the custody of the trial Judge, on preparation of the judgment, hearing having closed way back on September 30, 2021.
5. On December 15, 2021, the parties represented by Mr Mandala and Mr Mwasaru respectively, recorded a consent allowing the application dated October 21, 2021. The claimant was paid throwaway costs of Kshs 30,000 pursuant to the consent, on December 3, 2021,
6. After the consent orders were adopted, the respondent then presented an application dated February 4, 2022, asking the court to stay delivery of its judgment, which had already been delivered on January 28, 2022. That application serves no purpose, judgment having preceded it. It is struck off the record.
7. There is however a consent filed by the parties, effectively agreeing that judgment on record is set aside; the statement of response admitted out of time; the claimant recalled for cross-examination; and the



respondent allowed to defend the claim. Throwaway costs have been paid. The consent was adopted by the parties, albeit in an irregularly opened file.

8. The court shall uphold the consent orders, but direct that the matter is heard before another court, having taken the evidence of the claimant, and delivered a judgment. Objectivity would not be sustained, if the same court rehears the claim.

It is Ordered: -

- a. Judgment delivered on January 28, 2022 is set aside with the agreement of the parties.
- b. The claim shall be heard *de novo* before another judge.
- c. The holding file to be closed and proceedings to go on, under the original file.
- d. The registry shall not, going forward, open holding files, without an express order issued by the relevant trial court.

**DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY, UNDER THE
MINISTRY OF HEALTH AND JUDICIARY COVID-19 GUIDELINES, AT NAIROBI, THIS 29TH
DAY OF SEPTEMBER 2022**

James Rika

Judge

