



**Nyandega v Savannah Cement Limited (Cause E014 of 2020)
[2022] KEELRC 13002 (KLR) (27 October 2022) (Ruling)**

Neutral citation: [2022] KEELRC 13002 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E014 OF 2020
L NDOLO, J
OCTOBER 27, 2022**

BETWEEN

GEOFFREY NYANDEGA CLAIMANT

AND

SAVANNAH CEMENT LIMITED RESPONDENT

RULING

1. By its Notice of Motion dated 26th April 2021, the Respondent seeks extension of time within which to file its defence.
2. The Motion is supported by an affidavit sworn by the Respondent’s Counsel, Anthony Kilonzo and is based on the following grounds:
 - a) The Federation of Kenya Employers entered appearance on behalf of the Respondent on 21st July 2020;
 - b) The Respondent did not however file a defence within the prescribed time because of difficulty in securing documents at the height of the COVID-19 pandemic when employees were encouraged to avoid gatherings and to stay away from the workplace;
 - c) The Respondent is desirous of having the suit determined on merit and in this regard, has a defence that raises issues that the Court ought to consider;
 - d) The Court has discretion under Rule 13(5) of the ELRC Rules to extend time within which parties may file their pleadings;
 - e) There was no wilful neglect to file defence within the statutory period. Delay was occasioned by an act of God that made it difficult to secure supporting documents;



- f) It is trite law that every accused person has a right to face their accuser, that every person has an inalienable right to a fair hearing, that the overriding consideration guiding the court in determining such applications is the interest of justice and that justice shall be administered without undue regard to technicalities;
- g) That the Claimant will not suffer any prejudice if the orders sought herein are granted.
3. The Claimant opposes the Claimant's plea by his replying affidavit sworn on 25th May 2021. He accuses the Respondent of inordinate and unreasonable delay in filing its defence.
4. The Claimant states that the reason given by the Respondent for not filing its response in time is an outright lie since the Respondent Company was operational all through the pandemic period and even if they scaled down operations pursuant to the pandemic, it is not possible that this situation persisted all through the delay period of nine months.
5. The Claimant maintains that the Respondent's explanation for the delay is neither reasonable nor plausible.
6. The application was urged by way of written submissions. In the submissions filed on behalf of the Claimant, reference was made to the decision in *First American Bank of Kenya Ltd v Gulab P. Shah & 2 others* [2002] 1 E.A, 65 where the principles for extension of time for filing a defence were settled as follows:
- a) That there is a credible explanation for the delay;
 - b) That the contemplated defence is arguable deserving a day in court;
 - c) That the other party can adequately be compensated in costs for any prejudice they may suffer as a result of exercise of discretion in favour of the applicant.
7. The Respondent explains the delay in filing a defence by stating that it was prevented from gathering its supporting documents by the onset of the COVID-19 pandemic. The Court takes notice that the Claimant's claim was filed at the height of the pandemic when containment measures were at the peak. This could well have prevented even a diligent party from complying with litigation timelines.
8. I therefore find the Respondent's explanation for the delay reasonable and plausible.
9. Consequently, I allow the Respondent's application dated 26th April 2021 on the following conditions:
- a) The Respondent will file and serve its Memorandum of Response, supporting documents and witness statement(s) within the next fourteen (14) days from the date of this ruling;
 - b) The Respondent will pay to the Claimant thrown away costs assessed at Kshs. 10,000 within the next thirty (30) days from the date of this ruling;
 - c) The costs of the application will be borne by the Respondent.
10. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 27TH DAY OF OCTOBER 2022

LINNET NDOLO

JUDGE

Appearance



Miss Olonyi for the Claimant
Mr. Ouma for the Respondent

