



**Ombui & 12 others v Hamisi Njenga t/a Premier Technical Consultants & Emec Services
(Cause 490 of 2016) [2022] KEELRC 13317 (KLR) (30 November 2022) (Ruling)**

Neutral citation: [2022] KEELRC 13317 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 490 OF 2016
J RIKA, J
NOVEMBER 30, 2022**

BETWEEN

- MESHACK OMBUI 1ST CLAIMANT
- ROSELINE L. WAFULA 2ND CLAIMANT
- LUKAS ORWA OSOGE 3RD CLAIMANT
- GUYA ALFRED KITI 4TH CLAIMANT
- JAMES NYANDORO 5TH CLAIMANT
- MAURICE NZANI NGAIRA 6TH CLAIMANT
- MOHAMED THADHO 7TH CLAIMANT
- JOASH NYAMASI 8TH CLAIMANT
- CHRISANTHUS MOMANYI OBONYO 9TH CLAIMANT
- WILLIAM OUMA ASIN 10TH CLAIMANT
- YUSUF THADHO 11TH CLAIMANT
- RASHID LATKA 12TH CLAIMANT
- KENNEDY ONGORO 13TH CLAIMANT

AND

- HAMISI NJENGA T/A PREMIER TECHNICAL CONSULTANTS & EMEC SERVICES RESPONDENT**

RULING

1. This claim was filed 6 years ago, and judgment was delivered on February 25, 2022.



2. Hearing proceeded *ex parte*.
3. It is observed in the judgment, that the respondent was granted leave by the court severally, to file and serve his statement of response. No statement of response was filed.
4. The record indicates that hearing had been scheduled for February 26, 2021. The respondent had not filed any response or documents, and with the consent of the claimants' advocate, was allowed an extension of 14 days, to respond to the claim, with a mention date scheduled for June 4, 2021, to confirm respondent's compliance.
5. Come June 4, 2021, and there was still nothing filed by the respondent, and the matter was scheduled for formal proof, on October 14, 2021. Formal proof took place on October 14, 2021, and judgment was made in favour of the claimants, on February 25, 2022.
6. The respondent has made an application dated May 16, 2022, seeking orders for stay of execution; setting aside of *ex parte* judgment; and unconditional leave to respond to the claim. The respondent places blame on his previous advocates, for failure to file the statement of response, and to attend court when required to do so.

The Court Finds: -

7. The application has no merit at all.
8. The claim was filed in 2016, and service of the summons and the statement of claim was made upon the respondent in person.
9. He instructed advocates to appear for him way back on April 13, 2016. From then on, to the date of the judgment, there were multiple court appearances, where the court extended time for the respondent to file and serve his statement of response and documents. None was filed.
10. The court does not think that the respondent can be given further accommodation by the court. He was aware of the claim filed against him, and ought to have followed up his response to the claim, with his advocates. Once he received the summons and the statement of claim in 2016, he ought to have enquired from his advocates on the status of the claim, and provided instructions. His advocates' inaction of 6 years, cannot justify setting aside the judgment, on the argument that the error of an advocate should not be visited upon his client. There was no error discernible in the record, just plain refusal to submit to the judicial process, by both the respondent and his advocates. The reasons for that inaction have nothing to do with the claimants. They patiently went by the directions of the court, extending time to file a statement of response over a period of 6 years, while the [E&LRC \[Procedure\] Rules, 2016](#), contemplate that a statement of response is filed within 21 days of receiving the summons. The respondent cannot complain that he was denied by the court, an opportunity to file and prosecute his response. The record shows the court bent backwards, to avail the respondent an opportunity to answer the claimants. Reopening the proceedings, would be against fair administration of justice. Litigation must have an end.
11. This is an old claim which has come to an end.

It is Ordered: -

- a. The application filed by the respondent, dated May 16, 2022 is declined.
- b. Costs to the claimants.



**DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY, AT NAIROBI,
UNDER THE MINISTRY OF HEALTH AND JUDICIARY COVID-19 GUIDELINES, THIS 30TH
DAY OF NOVEMBER 2022.**

JAMES RIKA

JUDGE

