



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

CAUSE NO. 329 OF 2016

CLIFFORD OCHIENG ABILA.....CLAIMANT

VERSUS

NATIONAL CEREALS & PRODUCE BOARD.....RESPONDENT

RULING

1. The suit was first set for hearing on 18/4/2019 having been filed on 14/11/2016. Hearing that was to be on 19/3/2019 was deferred to 30/7/2019.
2. On 30/7/2019 Mr. Ayayo appeared for the claimant whereas Mr. Mutahi appeared for the respondent.
3. Mr. Mutahi sought adjournment of the matter on grounds that the respondent was yet to file list of documents. The application was opposed by Mr. Ayayo but the Court granted the adjournment and the matter was set for 23/1/2020.
4. On 23/1/2020 both counsel appeared and both Counsel said they were ready to proceed. The claimant testified in Chief and was partly cross-examined and Counsel for the respondent sought further adjournment to obtain further documents to enable him conclude cross-examination.
5. Mr. Ayayo opposed the application for adjournment since the earlier adjournment on 30/7/2019 was for the same reason.
6. The court declined the adjournment and the cross-examination proceeded and re-examination also concluded. The claimant closed his case.
7. Defence hearing was set for 23/4/2020.
8. The trial did not proceed on 23/4/2020 due to the COVID – 19 pandemic.
9. On 3/7/2020, the application was filed to set aside the Order of the Court, issued during trial on 23/1/2020 in which the Court refused to condone the respondents to file list of document which the respondent had been granted leave to file on 30/7/2019 but 8 months later and in the middle of a hearing wanted further condonation to file the list of documents in the middle of cross-examination of the claimant.
10. The application is opposed on grounds filed on 13/7/2020. The respondent states that the applicant was given opportunity to file list of documents and failed to do so for a period of four years since the time it filed its defence and the claimant had already closed his case.
11. That no justification to set aside the orders of the Court refusing further condonation of the respondent, have been advanced by the applicant in the application.
12. The applicant had filed supplementary affidavit to support its case.
13. It is the Court's considered finding that no ground permitted under Rule 33(1) (a) to (d) of the Employment and Labour Relations Court (Procedure) Rules, 2016 have been advanced by the applicant to warrant setting aside of the Order of the Court issued on 23/1/2020 in the middle of trial.
14. The application is a clear abuse of Court process in a matter which is partly heard and would have long been concluded herein were it not for the COVID- 19 pandemic.
15. The application is dismissed with costs it being vexatious and an abuse of Court process.

16. The matter be set down before the Employment & Labour relations Court Judge at Kisumu for conclusion of the trial on priority basis.

Dated and delivered at Nairobi this 11th day of February, 2021.

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

Mutahi for Respondent/Applicant

Mr. Ayayo for Claimant/Respondent

Chrispo: Court clerk