



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR

RELATIONS COURT AT NAIROBI

CAUSE NO. 2244 OF 2015

BETWEEN

MARK MBAU MATHEE.....CLAIMANT

VERSUS

RAI RADIO TELEVISIONE ITALIANA.....RESPONDENT

RULING

1. The Claim herein was heard and concluded on 26th November 2020, in the absence of the Respondent and its Counsel.
2. The Respondent has applied through Amended Notice of Motion dated 5th February 2021, to have the *ex parte* proceedings and consequential orders set aside, and the Respondent allowed to state its case.
3. The Application is supported by 2 Affidavits sworn by Counsel for the Respondent, Peter Muhoro Kimani.
4. Counsel explains that he and his client did not attend Court on 26th November 2021 due to a clerical error within Counsel's chambers, whereof the Hearing Notice served by the Claimant was not brought to the attention of the Counsel.
5. Counsel learnt that the matter had proceeded *ex parte*, when he went back to his chambers on 29th January 2021 following a forced isolation, arising from contact with a close family member who had Covid-19.
6. The Claimant opposes the Application through his Replying Affidavit sworn on 23rd February 2021. He explains that the Respondent's Counsel did not attend Court on 1st July 2020, when the hearing date was scheduled. He was served with the Hearing Notice. On the hearing date, the Court took a break and requested Claimant's Counsel to call his counterpart. There was no response from the Respondent's Counsel. The Claimant gave evidence, rested his case, and the Court gave orders on the filing of Submissions. The Claimant served his Submissions on 20th January 2021. The matter was mentioned on 21st January 2021 when again the Respondent did not attend Court. The Claimant urges the Court to reject the Application.

The Court Finds: -

7. Subsequent events happening after Counsel for the Respondent filed his Affidavits in support of the Application, suggest that there was a good reason why he failed to attend Court on the hearing date.
8. The events are common knowledge to the legal fraternity. They confirm the truthfulness of the Affidavits sworn by Counsel for the Respondent.
9. While the Court agrees that the Claimant has done everything required by the law to prosecute his Claim expeditiously, it is not lost on the Court that we are living in very unusual times, where discharge of routine professional and business obligations, has become severely restricted by the Covid-19 pandemic.
10. The unfortunate fact that Counsel for the Respondent is no longer with us, is sufficient reason, to set aside *ex parte* proceedings, and allow the Respondent an opportunity to reorganize its Response. It would be unjust and heartless not to allow the Application.

IT IS ORDERED: -

a. Ex-parte proceedings and consequential orders of 26th November 2020, are set aside.

b. Hearing to proceed de novo.

c. Suitable hearing date shall be assigned at the Registry.

d. No order on the costs.

DATED, SIGNED AND RELEASED TO THE PARTIES, UNDER MINISTRY OF HEALTH AND JUDICIARY COVID-19 GUIDELINES, AT NAIROBI, THIS 22ND DAY OF JULY 2021.

JAMES RIKA

JUDGE