



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NUMBER 1267 OF 2018

BETWEEN

WAIGI EVELYN MUTHONI.....CLAIMANT

VERSUS

ERICSSON KENYA LIMITED.....RESPONDENT

RULING

1. The Claimant filed her Statement of Claim on 30th July 2018. She pursues various reliefs, including compensation for unfair termination; release of certificate of service and certificate of clearance; and payment of pension.
2. The certificate of service, and certificate of clearance, were released to the Claimant pursuant to an Application filed by the Claimant, to compel the Respondent to release the said documents.
3. The Respondent also wrote to the pension scheme administrator, facilitating release of the Claimant's pension.
4. What remains to be heard is the claim for unfair termination.
5. The Respondent failed to file its Statement of Response within 30 days as directed by the Court. Pre-trial directions issued on 7th March 2019 and it was directed that the Claim proceeds by way of formal proof.
6. Through an Application dated 22nd February 2021, the Respondent prays for leave to file its Statement of Response and Documents.
7. The Application is supported by the Affidavit of Respondent's Advocate Terry Mwango, sworn on 22nd February 2021.
8. In sum, the Advocate explains that Parties were engaged in discussions out of Court, which culminated in partial settlement of the Claim. The Claimant had not taken active steps to prosecute the Claim while discussions were going on, and only did so in 2020.
9. The Application is opposed through a Replying Affidavit sworn on 15th June 2021 by the Claimant. She states that the pension scheme administrator insisted on production of certificate of service and certificate of clearance, before release of the Claimant's pension.
10. The Respondent declined release of the above certificates, and only acceded, once the Claimant filed an Application before the Court, and the Respondent's Director summoned by the Court to show cause, why the documents should not be released.
11. On 8th August 2018, the Respondent was granted 30 days to file its Response, but filed nothing. The Application filed by the Respondent is meant to delay and defeat the cause of justice. The Claimant urges the Court to throw out the Application with costs.
12. The Court directed on 22nd July 2021, that the Application is considered and determined on the strength of Affidavits and Written Submissions. These were confirmed to have been filed by the Parties, at the last appearance in Virtual Court, on 7th October 2021. Ruling was reserved for 16th November 2021 but is ready on the date shown below.

The Court Finds: -

13. The Respondent did not file and serve its Statement of Response within the time prescribed under the E&LRC [Procedure] Rules, and failed also to file its Response within 30 days' extension, granted by the Court on 8th August 2018.

14. There is however a plausible explanation for default. Parties were involved in out-of-court discussion in light of an Application made by the Claimant, seeking part of the prayers sought in the Statement of Claim.

15. Those discussions resulted in settlement of a substantial part of the Claim.

16. Is the Respondent to be closed out from defending the remainder of the Claim, having focused on settlement of part of the Claim, and in doing so, overlooked filing of the Statement of Response?

17. There is no good reason to close out the Respondent from defending the remaining claim on unfair termination.

18. In employment disputes, there is frequently a lot of out-of-court engagement, in attempt at reaching consensus, which is to be encouraged. The timelines given under the E&LRC [Procedure] Rules on filing and service of Pleadings should not to be enforced with eyes closed to other dispute resolution efforts the Parties may have engaged in. If delay is occasioned on account of Parties' involvement in alternative dispute resolution, the Court ought to exercise its discretion in favour of extending time to the defaulting Party. The timelines should not always be interpreted as unalterable deadlines. It is important that an Employer faced with a Claim for unfair termination is given an opportunity to show the Court that there were valid reasons to justify its decision, as required under Sections 43 and 47[5] of the Employment Act 2007.

19. The Court is satisfied that the Parties were engaged in discussions, which led to settlement of part of the Claim. The Respondent can be excused for not complying with the timelines given by the Court and the Procedural Rules, on filing of Response to the Claim.

IT IS ORDERED: -

a. The Respondent is granted 14 days from the date of this Ruling, to file and serve its Statement of Response, Documents, Witness List and Statements, and List of Issues.

b. The Claimant may file and serve a Reply to the Statement of Response and any additional Documents, within 14 days of service.

c. Parties to take a date for mention at the Registry to confirm compliance and to take a convenient hearing date.

d. Costs in the cause.

Dated, signed and released to the Parties electronically, at Nairobi, under Ministry of Health and Judiciary Covid-19 Guidelines, at Nairobi, this 9th day of November 2021.

James Rika

Judge