



REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS COURT

AT MOMBASA

CAUSE NO. E660 OF 2020

IBRAHIM EL KHOURY.....CLAIMANT

VERSUS

COASTAL BOTTLERS LIMITED.....RESPONDENT

R U L I N G

1. The claim herein is shown to have been filed on 7th December 2020. The Respondent filed a Memorandum of Appearance on 23rd December 2020 and subsequently filed a Response to the Statement of Claim on 21st January 2021.

2. Rule 14(4) of the Employment and Labour Relations Court (Procedure) Rules 2016 provides as follows:-

“the pleadings in a suit shall close fourteen days after the service of a reply under paragraph (3) or, where a reply is not filed, fourteen days after service of a response to pleadings under paragraph (1).”

3. The Claimant filed a Reply to the Respondent’s Response to the statement of claim on 19th February 2021. Pleadings in the suit ought to have closed fourteen (14) days after service of the Claimant’s Reply to the Respondent’s Response. The Claimant is not shown to have filed an affidavit of service on the Reply, as there is none on record. It is therefore not possible to tell, from the record before me, when pleadings closed.

4. On 9th March 2021, a representative of the Claimant’s Advocates on record attended the Court’s Registry and fixed the suit for mention on 24th May 2021.

5. In the meantime, the Respondent filed an Amended Response to Statement of Claim and Counter-Claim on 20th May 2021, dated 18th May 2021.

6. When the suit came up for mention on 24th May 2021, counsel for the Claimant informed the Court that he had not yet responded to the Amended Response and Counter-Claim, and sought to be given fourteen (14) days to do so. Counsel’s request was granted by the Court, and the matter was fixed for mention on 7th July 2021.

7. On 7th July 2021, counsel for the Claimant told the Court that the Claimant had not yet filed response to the Amended Response and Counter-Claim, and sought to be given fourteen (14) days to do so. The Court granted counsel’s prayer and fixed the matter for mention on 20th September 2021.

8. On 11th August 2021, however, the Claimant filed a Notice of Motion dated 6th August 2021, seeking the following orders:-

a) that the Amended Response to the Statement of Claim and Counter-Claim dated 18th May 2021 and filed on 20th May 2021 be struck out with costs.

b) costs of the suit and the application

c) any other relief that this Court might deem fit to grant in the circumstances.

9. The application is expressed to be brought under Sections 1A, 1B and 3A of the Civil Procedure Rules and Rule 14(6) of the Employment

and Labour Relations Court (Procedure) Rules 2016, and is supported by a supporting affidavit of MOHAMED TARIQ KHAN sworn on 6th August 2021.

10. The application is opposed by the respondent whose counsel filed a Replying Affidavit on 15th October 2021, sworn by ALOYSE WANGIRA ADVOCATE on 17th September 2021. The Claimant filed a further affidavit sworn by MOHAMMED TARIQ KHAN.

11. It is the Claimant's argument that the Respondent's Amended Response to Statement of Claim was filed after closure of pleadings, and without the Court's leave. The Respondent on the other hand maintains that when the suit came up for mention on 24th May 2021, counsel for the Respondent drew the Court's attention to the filing of an Amended Response and Counter-Claim by the Respondent, and sought the Court's directions.

12. I have looked at the Court's record for 24th May 2021, and have noted that, indeed, counsel for the Respondent brought to the Court's attention the fact that he had filed an Amended Response and Counter-Claim. The same record shows that counsel for the Claimant informed the Court that he had not yet responded to the Amended Response and Counter-Claim, and requested for fourteen days to do so. Counsel did not raise any issue over the filing of the said amended pleading.

13. As earlier stated in this Ruling, no Affidavit of Service was filed on service of the Claimant's Reply to the Respondent's Response to the Statement of Claim as there is none on record. It is, therefore, not possible for this Court to tell the date of such service. That fact notwithstanding, the Claimant's counsel twice sought for time to respond to the amended pleading, and twice the Court gave orders granting the Claimant time to file response to the said amended pleading. The Court has not been asked to either review or set aside its orders dated 24th May 2021 and 7th July 2021 for whatever reason.

14. Having considered the application and submissions filed by counsel for both parties pursuant to the Court's directions in that regard, I find no merit in the application. The Claimant's Notice of Motion dated 6th August 2021 is hereby dismissed with no order as to costs.

15. The Claimant is hereby directed to file and to serve Reply to the Respondent's Amended Response to the Statement of Claim and Counter-Claim within twenty-one days of this Ruling, if he wishes to do so.

16. The suit will be mentioned in Court on 10th February 2022 for pre-trial directions.

17. Orders accordingly.

DATED, SIGNED AND DELIVERED AT MOMBASA THIS 20TH DAY OF DECEMBER 2021

AGNES KITIKU NZEI

JUDGE

ORDER

In view of restrictions on physical Court operations occasioned by the COVID-19 Pandemic, this Ruling has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of Court fees.

AGNES KITIKU NZEI

JUDGE

Appearance:

Miss Athman for Mr. Khan for Claimant

Mr. Wangira for Mr. Muchiri Respondent