



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 2234 OF 2017

(Before Hon. Lady Justice Anna Ngibuini Mwaure)

MOSES NYAMBEGA ONDIEKI.....CLAIMANT

VERSUS

THE VICE CHANCELLOR MAASAI MARA UNIVERSITY.....1ST RESPONDENT

THE CHAIRMAN OF COUNCIL MAASAI MARA UNIVERSITY.....2ND RESPONDENT

MAASAI MARA UNIVERSITY.....3RD RESPONDENT

RULING

1..... The application herein is brought by the Respondent by its application dated 14th October, 2021.

Their prayers are basically that the Claimant's reply to the Respondent's further amended joint response be struck out for being filed out of time and also having been filed without leave.

2..... That the costs of this application be provided for.

3..... The Respondent averment is that the Claimant is responding to the Respondent and interested's parties further amended statement of claim which was filed on 10th June, 2019 way out of time.

4..... The Claimant filed the same on 4th October, 2021 and without the leave of the court.

5..... The Respondent state that the same was filed when pleadings were already closed and has raised new critical issues which the Respondents would need to address.

6..... The Claimant by his affidavit of response dated 15th October, 2021 states that he had leave to put in the said document and was granted on 21st July, 2021.

DETERMINATION

7..... The court perused the court file and did not see anywhere that leave was given to the Claimant to file the response to the amended memorandum of claim out of time.

The parties were before the Deputy Registrar, Hon. Mutai on 21st July, 2021 and were just given a mention date on 5th October, 2021.

I did not see any other orders in relation to granting leave out of time.

8..... Section 13 (3) of the Employment and Labour Relations Court Rules provide that a party served with a response to any pleadings under paragraph (1) may file and serve a reply with seven days of service of response.

9..... It is further provided that the court may by application by a party to any proceedings extend or reduce the time within which a

responding party may respond to the pleadings.

10... This is an old case of 2017 and the pleadings were closed. The Claimant had on or about 2018 applied to be allowed to file their amended memorandum of claim. Lady Justice Maureen Onyango granted the prayer by the Claimant and they were allowed to amend the same. They were given 14 days to do so and Respondent was given 14 days to respond. That Ruling was delivered on 26th October, 2018.

11... It is not expected to keep pleadings open forever and there has to be a point where the court will say "NO MORE". That is why the law provides timelines about filing of pleadings.

12... Three years down the line the Claimants cannot still be applying to amend their pleadings. Unless of course they have not been diligent in preparing their pleadings. There has to be an end to this.

Furthermore the Claimant went ahead to file the same without the leave of the court.

13... The court is persuaded the Claimants response to further amendments of Respondents and interested's parties joint response should not be allowed as pleadings cannot be open indefinitely. It is the high time the case proceeds for hearing without any further delay.

Parties are referred to the Deputy Registrar on 8th February, 2022 to take a fresh hearing date before any Employment and Labour Relations Court Judge.

DELIVERED, DATED AND SIGNED IN NAIROBI THIS 8TH DAY OF DECEMBER, 2021.

ANNA NGIBUINI MWAURE

JUDGE

ORDER

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. 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 1B of the 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.

A signed copy will be availed to each party upon payment of court fees.

ANNA NGIBUINI MWAURE

JUDGE