



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR
RELATIONS COURT AT MOMBASA
CAUSE NUMBER 956 OF 2016

BETWEEN

ABIGAEL KERUBO ONDIEKI.....CLAIMANT

VERSUS

ABSON MOTORS LIMITED.....RESPONDENT

Rika J

Court Assistant: Andrew Mwabanga

M. Mochama & Company Advocates for the Claimant

Lumatete Muchai & Company Advocates for the Respondent

RULING

1. The Claimant filed this pregnancy discrimination Claim, on 15th December 2016.
2. The Respondent filed its Statement of Response on 16th January 2017.
3. The Claimant gave evidence, and rested her case, on 9th October 2019. The Respondent's Witness was due to be heard on 3rd March 2020. He did not attend Court. The Respondent sought for adjournment, which the Court declined, closed the proceedings and directed Parties to file their Closing Submissions.
4. On 19th March 2020, the Respondent filed an Application under Certificate of Urgency, asking the Court to set aside the orders of 3rd March 2020, and relist the Claim for full hearing.
5. The Application is supported by the Affidavit of Respondent's General Manager, Simon Mwaniki, sworn on 18th March 2020. He states, that on the date appointed for hearing of his evidence, he was in Kitui County, attending to his ailing Mother. He states he is the only Witness for the Respondent, and is ready to give evidence.
6. The Application is opposed. The Claimant's Advocates filed lengthy Grounds of Opposition on 22nd July 2020. In summary, the Claimant states that, the Respondent has not been keen on responding the Claim; adjournment costs granted to the Claimant against the Respondent, for the sum of Kshs. 5,000, have not been paid; it was not communicated to the Court and the Claimant on 3rd March 2020, that Mwaniki was in Kitui attending to his ailing Mother; and the Application is meant to delay conclusion of the Claim.
7. On 24th September 2020, the Application came up for hearing. The Claimant's Advocate informed the Court that the Claimant was willing to concede to the Application, subject to payment of costs at Kshs. 10,000 by the Respondent. The Respondent did not agree to this proposal, selecting to have the Application considered and determined based on Written Submissions.

The Court Finds: -

8. The Respondent has not shown reasonable ground to warrant setting aside the orders of 3rd March 2020.
9. There was no indication on 3rd March 2020, that Respondent's Witness was held up in Kitui, attending to his ailing Mother.
10. The Respondent asked for, and was allowed adjournment on 9th October 2019, on the ground that its Witness, the General Manager, was held up in Nairobi.
11. On the hearing date, 3rd March 2020, the Respondent's Advocate told the Court he was not able to reach the Respondent, a corporate entity. It was not that the Respondent's General Manager was unreachable. The Court gave the Respondent's Advocate up to 10.00 a.m. to present evidence, failing which proceedings would be closed. No Witness was presented. The Respondent List of Witnesses, filed on 16th August 2018, indicates other than Mwaniki, the Respondent intended to call other Witnesses, with the leave of the Court.
12. At the hearing of the Claimant's evidence on 9th October 2019, the Respondent's Advocate, who was present throughout, did not cross-examine the Claimant. Her evidence was not contested.
13. It was suggested by the Claimant's Advocate, upon failure by Mwaniki to give evidence, on 3rd February 2020, that his Witness Statement on record, is adopted as his evidence. The Respondent did not take up the offer.
14. On 24th September 2020, the Claimant offered to concede the Application, subject to payment by the Respondent of costs of Kshs. 10,000, an offer the Respondent declined.
15. The Respondent has not acted reasonably, and has failed to assist the Court, in furthering the objectives of its constitutive Act, under Section 3, E&LRC Act Cap 234 B, the Laws of Kenya.

IT IS ORDERED: -

- a. The Application by the Respondent dated 19th March 2020 is declined.*
- b. The Parties shall file and exchange their Closing Submissions as ordered.*
- c. Submissions to be filed and exchanged within 30 days of the date of this Ruling.*
- d. The file shall be mentioned thereafter before the Deputy Registrar E&LRC Mombasa, who shall cause the file to be forwarded to the undersigned Judge at E&LRC Nairobi, for preparation of Judgment.*
- e. Judgment on notice.*
- f. Costs of the Application to the Claimant.*

Dated, signed and released to the Parties, electronically at Nairobi, under Ministry of Health and Judiciary Covid-19 Guidelines, this 15th day of December 2020.

James Rika

Judge