

REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS

COURT OF KENYA AT NYERI

CASE NO. 264 OF 2018

JOHN WEKESA WANJALA.....CLAIMANT

VERSUS

MURANG'A UNIVERSITY OF TECHNOLOGY.....RESPONDENT

RULING

1. The Respondent herein applies to set aside the order of the Court denying the Respondent to avail its witness or defence due to the failure to do so in terms of the order of 12th November 2018. The Respondent asserts it was shut out as the Claimant did not serve the Respondent with the order of the court.
2. The Claimant on his part objects asserting that the Respondent ought to have known it had to respond on time in terms of the Rules of this Court. He states he is the one who is suffering and the Respondent could dismiss him in 1 day yet it was struggling to give a response within 21 days. He submits that granted the salient provisions of the Constitution, Labour Laws and the Civil Procedure, the Respondents request is not one the court should grant.
3. In their reprise, the Respondent asserts that the oxygen principle and Article 159(2)(d) as well as the provisions of Rule 13(5) of the Court's Rules should guide the court in allowing the Respondent to re-open the case by filing the defence and calling its witnesses.
4. The Claimant asserts he is suffering and the court empathises. The Respondent however was only notified of the hearing on 24th January 2019. Though the claim and the hearing notice are stated to have been served, the court had indicated to the Claimant that he should serve afresh and gave a hearing date. Being a litigant acting in person, I explained to him what he was to do and asked him to seek the help of officials at the Registry to ensure the process was served appropriately. Unfortunately it seems that the service the second time did not include a rider that the case required prompt action on part of the Respondent in terms of the directions given on 12th November 2018. As a consequence the Respondent was shut out of the proceedings on the premise they were duly notified of the directions of the court. Whereas the court is mindful of the predicament of the Claimant as a litigant who is out of employment with Respondent, that is not the only consideration the court has to have. Under Article 159(2)(d), this court, as every other court in the land, has to ensure justice is not denied or delayed on grounds of procedural technicalities. In the **Nick Salat** case the Court of Appeal rendered itself eloquently regarding the need to permit ventilation of the grievance by parties with the oxygen principle on mind.
5. In my considered view, as it is admitted by the Claimant that the Respondent was not notified expressly about my directive the interests of justice dictate that I allow the defence to be filed within 7 days, the said defence be served upon the Claimant with haste to permit him to file a reply if he needs to within 7 days. The matter will therefore be mentioned on 12th March 2019 to set a date for hearing. As Claimant has been somewhat inconvenienced I'll order payment of Kshs.7,000/= as thrown away costs for the matter.

It is so ordered.

Dated and delivered at Nyeri this 27th day of February 2019

Nzioki wa Makau

JUDGE

I certify that this is a

true copy of the Original

Deputy Registrar