



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA

CAUSE NUMBER 297 OF 2016

BETWEEN

RONALD ODHIAMBO OWUOR.....CLAIMANT

VERSUS

TEA WAREHOUSES LIMITED.....RESPONDENT

RULING

1. The Parties gave evidence, and closed their respective cases, on 9th July 2018. They were directed to file their Closing Submissions within 21 days of closure of the hearing.
2. The Claimant filed his Submissions on 23rd July 2018. The Respondent did not. Instead, the Respondent filed an Application on 8th August 2018, seeking to have Respondent's case reopened, and the Respondent allowed to tender new evidence.
3. Parties filed Submissions with respect to this Application, and the Application is the subject matter of today's Ruling.
4. The Application is supported by the Affidavit of George Nesbitt, Respondent's Director and sole Witness for the Respondent at the main hearing, sworn on 6th August 2018. Nesbitt explains that the Respondent inadvertently omitted some crucial documents from its bundle of documents exhibited before the Court. It is imperative that the case is reopened, to enable the Respondent exhibit these documents, and assist the Court in making a fair determination.
5. The Application is opposed through the Affidavit of the Claimant, sworn on 21st September 2018. The Claimant points out that the Respondent had, in the course of the hearing, asked for several adjournments and leave to file documents. All such Applications were allowed. The current Application is meant to delay finalization of the Claim.

The Court Finds:-

6. In the interest of justice the Court shall allow the Application filed by the Respondent. It is true that the Respondent has been less than diligent, in responding to the Claim. The Claim however was filed in 2016. It is not a very old matter, which must be determined on accelerated basis. There is time for additional evidence, the Respondent's indolence, and inconvenience to the Claimant, notwithstanding. The evidence sought to be adduced by the Respondent is important, in fair determination of the Claim. The Claimant attempts to respond to this fresh evidence in his Replying Affidavit, and give an opinion on the legal effect of the fresh evidence. The line taken by the Claimant is best articulated through fresh oral hearing, and cross-examination of the Respondent's Witness. It is not expected that this evidence will take too long to be recorded. The Court has perused the documents sought to be produced by the Respondent, and is of the view that the documents will add value to the Judgment of the Court.
7. The Respondent shall however meet the costs of reopening the hearing. The Parties have been heard and closed their respective cases. There was adequate opportunity availed to the Respondent to file all relevant documents at the pretrial stage. The Director George Nesbitt gave evidence and ought to have exhibited all relevant documents within his custody, during the hearing. The Respondent ought to have filed all documents intended to be relied on, with its Statement of Response. If for some reasons some documents were left out, they ought to have been filed and served upon the Claimant, at least 14 days before the hearing, under Rule 14 [10] of the Employment and Labour Relations Court [Procedure] Rules 2010. The reopening of the proceedings definitely imposes unexpected legal costs upon the Claimant, who has done everything required to be done, including the filing of the Closing Submissions. The Claimant expected, and rightly so, that the next step in the proceedings should be the delivery of Judgment.

IT IS ORDERED:-

a) Proceedings are reopened.

b) Further hearing of the Respondent's case on a date to be agreed upon by the Parties.

c) The Claimant is at liberty to give further evidence in response to the additional evidence introduced by the Respondent.

d) The Respondent shall pay costs of Kshs. 6,500 to the Claimant before the hearing date.

Dated and delivered at Mombasa this 22nd day of February 2019.

James Rika

Judge