



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**  
**AT MOMBASA**  
**CAUSE NUMBER 328 OF 2018**

**BETWEEN**  
**CHARLES MBUTHIA MURIITHI ..... CLAIMANT**  
**VERSUS**  
**SGS KENYA LIMITED.....RESPONDENT**

**RULING**

1. This Claim was filed on 16<sup>th</sup> May 2018. The Notice of Summons, Statement of Claim and accompanying Documents, were served upon the Respondent on 8<sup>th</sup> June 2018.
2. The Respondent filed Memorandum of Appearance on the same date, 8<sup>th</sup> June 2018.
3. Rule 13(1) of the Employment and Labour Relations Court (Procedure) Rules 2016, requires that if a Party served with a Statement of Claim intends to respond, the Party shall, within 21 days from the date of service, enter appearance and file and serve a Response to the Suit.
4. No Statement of Response was filed within 21 days.
5. On 2<sup>nd</sup> August 2018, the Claimant wrote to the Respondent asking to be served with the Statement of Response.
6. There was no reply to Claimant's request.
7. On 18<sup>th</sup> September 2018, the Claimant wrote to the Court asking that the matter be scheduled for formal proof.
8. Rule 15(3) states that where no Response is filed within the prescribed period, the Court may, upon the application by the Claimant direct that the matter proceeds for formal proof.
9. This letter of 18<sup>th</sup> September 2018 was again copied to Respondent's Advocates.
10. On 22<sup>nd</sup> November 2018, the Claimant scheduled the Claim for mention on 14<sup>th</sup> February 2019 with a view to taking a date for formal proof.
11. On 13<sup>th</sup> February 2019, a day before mention and without any leave of the Court, the Respondent filed a Statement of Response.
12. On 14<sup>th</sup> February 2019, the Court ordered that the Statement of Response was filed way out of time and without the leave of the Court; it was improperly on record and thereby struck out; and the Claim was fixed for formal proof on 20<sup>th</sup> March 2019.
13. The Respondent filed an Application on 7<sup>th</sup> March 2019, almost a month after the Claim was fixed for formal proof, asking the Court to review and set aside the orders made on 14<sup>th</sup> February 2019.
14. The Application is , supported by the Affidavit of Respondent's Advocate, Mr. Joel O. Obura, sworn on 7<sup>th</sup> March 2019.

15. Mr. Obura explains that he had significant personal health challenges from the time his Law Firm filed the Memorandum of Appearance. He also was taking care of his terminally sick Parent outside the city of Mombasa. These factors led to the inadvertent default to file Response on time.

16. He depones further that the Respondent is willing to respond to the Claim. The dispute involves weighty matters, among them sexual harassment, and the outcome of the dispute will have wide ramifications at the Respondent's workplace.

17. The Claimant filed his Replying Affidavit, sworn on 14<sup>th</sup> March 2019, on the same date, 14<sup>th</sup> March 2019.

18. He outlines the relevant dates on filing, service and scheduling for formal proof of the Claim herein. He exhibits letters written to the Respondent's Advocates, after filing of Memorandum of Appearance, asking for the Respondent to avail to the Claimant, its Response. His position is that the Application is made in bad faith, and meant to delay hearing.

19. The Application was heard on 14<sup>th</sup> March 2019. The Respondent reiterates the contents of Mr. Obura's Affidavit. The Claimant restates in his submissions, the contents of his Replying affidavit. He argues that even assuming Mr. Obura had personal problems as alleged, Mr. Obura is not the only Advocate, in his Law Firm. The Respondent answers that while this is so, each brief in a Law Firm is assigned a particular Advocate. In this case the brief was assigned to Mr. Obura.

**The Court Finds:-**

20. There is no dispute that the Respondent was served with the Summons and Statement of Claim, and upon filing Memorandum of Appearance, failed to file Response.

21. The Claimant went as far as writing to the Respondent, requesting to be served with the Statement of Response. There was no service, or reply to the Claimant's letter.

22. The Statement of Response was filed only a day to the date fixed for mention.

23. There are no convincing reasons explaining Respondent's default.

24. The Procedural Rules governing proceedings of the Court must be followed. If Parties are allowed to file and serve Pleadings at their own pace, the effect is to create disorder, and deprive the adverse Party, the right to fair and efficient administration of justice.

25. Mr. Obura has not explained satisfactorily why no other Advocate in his Law Firm, could attend to his brief, or even discharge a minor role such as replying to Claimant's Advocates' letter, in his absence.

26. The overall effect of Respondent's conduct, is to delay finalization of the Claim. Formal proof, fixed for 20<sup>th</sup> March 2019, could not go on.

27. The Court shall in the interest of justice, and not to appear insensitive to Mr. Obura's assertion that he was attending to his own health, and that of his father, allow the Application as follows:-

**a. Response to Claim, filed on 13<sup>th</sup> February 2019 is reinstated, and deemed duly filed and served.**

**b. The order for formal proof is set aside.**

**c. The Respondent shall pay costs of Kshs. 15,000 to the Claimant.**

**d. Parties to comply with Rule 15, E&LRC (Procedure) Rules, and endeavor to schedule the main dispute for hearing.**

**Dated and delivered at Mombasa this 28<sup>th</sup> day of March 2019.**

**James Rika**

**Judge**