



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA**

**CAUSE NO 435 OF 2016**

**JAMES KINENE MURAGURI.....CLAIMANT**

**VERSUS**

**RAFFIA BAGS (EAST AFRICA) LIMITED.....RESPONDENT**

**RULING**

1. Before me is the Respondent's application brought by Notice of Motion dated 11<sup>th</sup> April 2018 seeking orders to reopen the case for defence hearing.
2. The application, which is supported by an affidavit sworn by the Respondent's Human Resource Manager, Victor Ouma is based on the following grounds:
  - a) That the Claimant proceeded *ex parte* and closed his case;
  - b) That the Court directed the parties to file respective submissions;
  - c) That the Respondent had instructed the firm of Wilbur Anthony Company Advocates to represent it in the case;
  - d) That the said firm did not inform the Respondent on how the case was proceeding;
  - e) That the Respondent filed its defence, supporting documents and witness statement on time and was ready for the case;
  - f) That in the circumstances it would be fair if the Court allows the application as prayed;
  - g) That the Claimant will not be prejudiced in any way if the Court allows the application;
  - h) That the Respondent is ready and willing to abide by any conditions set by the Court for re-opening of the case.
3. The Claimant's response is contained in Grounds of Opposition dated 12<sup>th</sup> April 2018 plus a Replying Affidavit sworn on 8<sup>th</sup> May 2018.
4. The Claimant states that he will be gravely prejudiced if the case is reopened as he had made over 4 trips to attend hearing of the case.
5. The Claimant points out that the matter was set for directions on 3 occasions being 18<sup>th</sup> August 2016, 11<sup>th</sup> November 2016 and 9<sup>th</sup> January 2017 and for hearing on 25<sup>th</sup> February 2018.
6. The Claimant adds that on all these occasions, the Respondent's Advocates had either sent representatives or absented themselves. As a result of default on the part of the Respondent, the Court could not deal with the matter expeditiously. He further states that he had spent well over Kshs. 120,000 in travel expenses.
7. The Claimant states that the case was set for hearing on 27<sup>th</sup> February 2018 and a hearing notice served on 7<sup>th</sup> February 2018. He adds that there was nothing to show that the Respondent was ever ready to proceed with the case.
8. The Claimant also states that he had learnt that the Respondent had closed down its production unit and was in the process of looking for a buyer.
9. The application was urged by way of written submissions.

10. The single issue for determination in this application is whether the Respondent has made out a case for re-opening of the case which was closed on 27<sup>th</sup> February 2018.

11. In his written submissions filed in court on 29<sup>th</sup> August 2018, the Claimant sets out a chronology of pre-trial events thus:

- a) The Claimant filed his claim on 7<sup>th</sup> June 2016;
- b) The Respondent entered appearance on 18<sup>th</sup> July 2016 and filed a Statement of Response on 20<sup>th</sup> July 2016;
- c) The matter came up for pre-trial conference on 25<sup>th</sup> July 2016 when the Claimant was given time to file a response to the Respondent's Statement of Response;
- d) On 18<sup>th</sup> August 2016, the Court allowed the Claimant to file a Notice to Admit Facts and a supplementary list of documents;
- e) On 5<sup>th</sup> October 2016, the matter was fixed for mention on 11<sup>th</sup> November 2016 to allow the Respondent time to respond to the Notice to Admit Facts;
- f) The matter was subsequently set for hearing on 18<sup>th</sup> October 2017 but neither the Respondent nor its Advocates attended court. The matter was adjourned to 16<sup>th</sup> November 2017;
- g) On 6<sup>th</sup> November 2017, the Court adjourned the matter to 27<sup>th</sup> February 2018 because the Trial Judge was proceeding on transfer.

12. The Respondent did not object to this chronology of pre-trial events. In fact, its only excuse for failing to attend court when required is that it had no information from its then Advocates, with whom it claims to have fallen out.

13. This begs the question as to why the Respondent itself did not bother to find out what had happened to the case. In ***Edney Adaka Ismail v Equity Bank Limited [2014] eKLR Mabeya J*** rightly held that a party craving the exercise of discretion in their favour must show tangible steps made by them to follow up their case.

14. In ***Whycliffe Bundi v Flame Tree Africa Limited [2018] eKLR*** this Court stated the following:

***“cases belong to the parties and not their Advocates. The refrain that a party was let down by their Advocate is now a tired one and must be confined where it belongs, that is in the realm of advocate/client relationships.”***

15. In the ***Whycliffe Bundi Case*** (supra) I held that a party will not be allowed to abdicate their responsibility as a litigant by pointing an accusing finger at their Advocate. This is precisely what the Respondent seeks to do and I have no motivation to exercise discretion in its favour.

16. The Respondent's application dated 11<sup>th</sup> April 2018 is therefore disallowed with costs to the Claimant.

17. The parties are directed to file final submissions on the main suit within the next fourteen (14) days from the date of this ruling.

18. Orders accordingly.

**DATED SIGNED AND DELIVERED AT MOMBASA THIS 2<sup>ND</sup> DAY OF DECEMBER 2019**

**LINNET NDOLO**

**JUDGE**

Appearance:

Mr. Kimani for the Claimant

Mr. Mathare for the Respondent