



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO.2098 OF 2014

Before Hon. Lady Justice Hellen S. Wasilwa on 21st February 2018

PRITAM SINGH KHALSACLAIMANT

VERSUS

INTEX CONSTRUCTION LIMITEDRESPONDENT

RULING

1. The Application before Court is the Respondent's/Applicant's case dated 5th December 2017 where the Applicants seek orders to suspend the closure of pleadings and delivery of judgement pending the hearing and determination of this application and to set aside its orders of 16th November 2017 allowing the case to proceed exparte.

2. They also want the Court to be pleased to re-open this case and allow the Respondent to file its list of documents and substitute its list of witnesses and statements.

3. The application is based on the following grounds:-

a. That this matter came up for hearing on 16th November, 2017 but neither the defendant's Counsel nor the Respondent attended Court.

b. That Mr. Moses Munoko Advocate who was in conduct of this case failed to notify this firm of this hearing date after out of Court negotiations having failed between him and the former Claimant's Advocate's on record and more so the current Advocates coming on record.

c. That the said Mr. Moses Munoko, Advocate had left employment in this office on 13th November, 2017 without notifying the firm that this case was coming up for hearing on 16th November 2017.

d. That the Respondent has a meritorious defence in this case and should be given an opportunity to be heard before Court can deliver its judgment.

e. That it is in the interest of justice that this application be allowed d as prayed.

4. They aver that they have a good defence and should be allowed to defend the claim.

5. The Claimant opposed this application through a replying affidavit filed on 18th December 2017. The Claimant depones that this case proceeded for hearing on 16th November 2017 ex parte after the Respondents who had been served failed to attend Court.

6. The Claimant avers that failure by the Respondent to attend was as a result of willful neglect of the Court proceedings and lack of due care for the proceedings and the interests of their client. The Claimant submits that the Respondent Applicant should not be allowed to benefit from their negligence.

7. The Claimant has also submitted that he would be prejudiced and his claim compromised if the Respondents are allowed to re-open his case as he had already testified.

8. He believes that the Applicant's application is an attempt to circumvent a fair trial in the suit and prejudice his claim since the application is not only seeking to set aside the hearing of this suit but also to reopen pleadings, which were closed in April 2015.

9. The Claimant states that they have already filed their submissions and the Respondent will have an unfair advantage over them.

10. I have considered the averments of both parties. It is true that the Respondent Applicants have been negligent in pursuing this claim to the point of failing to attend Court when the case was scheduled for hearing. The Respondent Applicants have explained that this was due to the omission to diarize this case by their Counsel who has since left their firm. The omission was costly, however under the principles of natural justice, a man should not be condemned unheard. The Respondents have submitted that they have a good defence which they would wish to present before Court.

11. In the circumstances, I exercise my discretion and allow the Applicant's application to the extent that I allow the re-opening of the claimant's case. However, the Applicant's prayer to introduce fresh documents at this stage is declined as this will be prejudicial to the Claimant's case and an attempt to fill gaps they may have left after considering the evidence of the Claimant and submissions already filed.

12. I will therefore allow only the re-opening of the Claimant's case and allow the Respondents to prosecute their defence. In view of the fact that considerable ground has been lost by the Claimants as the Respondents pursued this application, I will allow costs to the Claimants to the tune of 30,000/= as thrown away costs.

Read in open Court this 21st day of February, 2018.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

No appearance for Parties