



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT ELDORET

CAUSE NO.67 OF 2017

ROBERT KIMUTAI TIREITO.....CLAIMANT

VERSUS

LITTLE LAMBS COMPANY LIMITED.....RESPONDENT

RULING

By application and Notice of Motion dated 9th May, 2018 the respondent, Little Lambs Company Limited is seeking for orders that;

The court do set aside the ex parte hearing proceedings by the claimant herein.

The court do set aside the closure of the claimant's case and reopen it for hearing and disposal.

The costs of this application be provided for.

The application is supported by the Affidavit of Angu Kitigin, Advocate for the respondent and on the grounds that the matter was not listed for hearing on 8th May, 2018 and counsel for the respondent was engaged prior in the Employment and Labour Relations Court, Kisumu in a cause where both advocates as herein had taken a date by consent. This matter was listed for 9th May, 2018 for mention to take a mutually convenient hearing date when the court noted the anomaly.

Other ground in support of the application are that the respondent moved with haste upon noting the hearing had proceeded *ex parte* and made this application to set aside the proceedings so as to have the respondent attend.

In his affidavit, Mr Angu avers that as Counsel for the respondent, he was served with Mention Notice for 9th May, 2018 when the matter would have been given a hearing date. Counsel for the claimant was aware that they were held together in causes No.118 of 2014 and 319 of 2014 in Kisumu before the Employment and Labour Relations Court.

Mr Angu also avers that this matter was listed for mention on 9th May, 2018 and when Mr Kagunza held brief he was informed that hearing proceeded on 8th May, 2018 in the absence of the respondent. In the interests of justice the application be allowed to give the respondent a fair chance to be heard.

In response the claimant opposed the application and filed Grounds of Opposition. The grounds are that the respondent is not entitled to the orders sought as the hearing notice for the 8th May, 2018 was served on the respondent's advocate on 30th April, 2018 and an Affidavit of Service filed to this effect. The respondent's Advocates opted to attend a ruling before the Deputy registrar in Cause No.319 of 2014 in Kisumu instead of attending at this hearing. The matters at Kisumu were not cause listed.

In this matter, a mention date was initially taken for the 9th May, 2018 in order to fix a hearing date before the mention date on 25th April, 2018 when the court ordered that hearing should proceed on 8th May, 2018. A hearing notice was issued to this effect. The claimant complied and served the respondent with a hearing notice.

For a party to be given orders as sought by the respondent, the court rules requires one to give satisfactory reason which the respondent has failed to do. The application is not made in good faith and should be dismissed with costs.

Both parties made oral arguments in court.

This is a matter initially filed at Nakuru, Employment and Labour Relations Court on the 19th May, 2014. To ensure access to justice, the Chief Justice published new sub-registries for the court to be able to dispense justice and get closer to litigants.

Both parties have since taken hearing direction and closed.

On 25th April, 2017 the court sitting in Nakuru made an order and directions to have the matter transferred to Eldoret registry as the cause of action arose within the jurisdiction of the area designated under Eldoret sub-registry for Employment and labour relations matters.

On several dates the matter came up in court and hearing dates were not allocated as the respondent's advocate was absent. See the record of the court.

On 20th November, 2017 the court directed parties to take a hearing date at the registry.

On 5th April, 2018 the claimant attended at the registry and took a mention date ex parte for the 9th May, 2018 and served the respondent. this is admitted by the respondent.

On the matter in issue, the matter was in court on 25th April, 2018 for mention as this was the week the court was sitting for the first time in the year, 2018 at Eldoret. The respondent was served with a mention notice but failed to attend. Noting the court diary, the hearing dates were confirmed for the 8th May, 2018 and the claimant directed to serve the respondent with a hearing notice. This was done and an Affidavit of Service filed as sworn by Joseph Ochieng Onawa on 7th May, 2018. The records shows the respondent's advocate received this Hearing Notice on 30th April, 2018.

In the affidavit of Mr Angu in support of the respondent's application, there is no mention of the Hearing Notice served on 30th April, 2018.

Noting the provisions of section 3 of the Employment and Labour Relations Court Act, 2011 and to ensure justice to both parties, the court well apprised on events and matters leading to the hearing on 8th May, 2018 i find no good cause to warrant the claimant being made to reopen his case. The proceedings which took place were legitimate and followed best practice the court well aware of the returns made that the respondent was dully served with the requisite notices.

However to ensure justice to both parties, the respondent shall be allowed to recall the claimant for cross-examination and to urge their defence. As the claimant is now being forced to return to court on a matter he had closed and awaiting judgement, the respondent shall meet his costs and those of his advocates for the next hearings for his case and for the defence all assessed at Kshs.20,000.00 all inclusive. Such costs shall be paid before the respondent can be given a hearing.

A hearing date shall be allocated on priority basis noting the context of the application herein.

Accordingly, application allowed to the extent that the respondent shall recall the claimant for cross-examination; pay costs of Kshs.20, 000.00 before hearing; a hearing date be allocated on priority.

Scheduled judgement put in abeyance.

Delivered in open court at Eldoret this 30th day of May, 2018.

M. MBARU

JUDGE

In the presence of:

Court Assistant: Martin