

REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS

COURT OF KENYA AT NYERI

SUIT NO. 263 "A" OF 2016

JOHN THOMAS NGUGI MBAU CLAIMANT

VERSUS

THE COUNTY PUBLIC

SERVICE BOARD OF KIAMBU RESPONDENT

RULING

1. The Respondent/Applicant's Motion seeks the leave of court to have to file a response out of time. The Respondent asserts that the legal assistant failed to diarise the defence filing. The Respondent prays that the defence and documents filed on 22nd February 2018 together with the statements of witnesses be deemed to be duly filed. The said Motion is supported by the Affidavit of Miss Makena Kaburu Advocate.

2. The Claimant/Respondent opposes the Motion and asserts that in bringing the Motion the Respondent should show the inability was as a result of a good reason. The Claimant asserts that even though the ends of justice require that each party be heard the Respondent had not taken any step to file the response or even had any effort made to defend the suit. The Claimant urged the court to dismiss the Motion as the facts pertaining to the dismissal were within its knowledge. The court was therefore urged to disallow the application.

3. The court is drawn to **Rule 13(5)** of the *Employment and Labour Relations Court (Procedure) Rules 2016*. The Rule permits a party to file a defence within 21 days of service of summons and claim. The Respondent now seeks leave to file the defence out of time. To their saving grace, the suit has not been heard yet and in the view of this court no prejudice will be suffered as critical steps in the determination of the dispute are yet to be taken. The court will exercise discretion and permit the Respondent to file and serve a defence within 7 days of today alongside the statements and documents as attached to the defence filed on 22nd February 2018. The Respondent will meet the costs of the Motion.

It is so ordered.

Dated and delivered at Nyeri this 21st day of May 2018

Nzioki wa Makau

JUDGE