



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAIROBI

CAUSE NO. 872 OF 2013

SHADRACK OTUOMA KHAMLA.....1st CLAIMANT

GEORGE OBILO OYIER.....2nd CLAIMANT

HENRY KUNANI SHEMEMA.....3rd CLAIMANT

JACQUELINE LORNA OKACH.....4th CLAIMANT

DAVID NZEKA KAMANI.....5th CLAIMANT

BENARD OTIENO OTWAL.....6th CLAIMANT

JOSEPH NZAU NDETO.....7th CLAIMANT

ISSAC MUTIE KIMEU.....8th CLAIMANT

v

ANIKET ENTERPRISES LIMITED.....RESPONDENT

RULING

1. This Cause came up for hearing on 13 March 2018.
2. An attempt by the Respondent to secure an adjournment was declined by the Court due to the age of the Cause.
3. Among the reasons which were advanced in support of the application were that Mr. Tariq, advocate for the Respondent was before the High Court Malindi in Misc Application No. 62 of 2016, Misc Application No. 9 of 2017 and High Court Civil Case No. 13 of 2014.
4. The Court therefore directed the hearing to proceed.
5. An advocate holding brief for Mr. Tariq sat through the 1st Claimant's testimony but declined to cross examine him.
6. The Court reserved judgment to 12 April 2018.

7. On 5 April 2018, the Respondent filed an application under certificate of urgency seeking orders
 1. ...
 2. This Honourable Court be pleased to set aside its orders made on the 13th March 2018.
 3. The Honourable Court sets down a date for fresh hearing of this matter.
 4. In the alternative, this Honourable Court be pleased to set down a date for hearing of the Respondent's case.
 5. The Honourable Court do compel the Claimant's witness to attend Court for cross examination.
 6. Costs be in the Cause.
8. The Court directed the Respondent to serve the application for *inter partes* hearing on 11 April 2018, but because the Claimants' served a replying affidavit in opposition to the application on the morning of the hearing, hearing was rescheduled to 18 April 2018.
9. The grounds advanced by the Respondent in support of the application were that the Court was misled on 13 March 2018 to believe that all previous adjournments were at the behest of the Respondent
10. According to the Respondent, it had only sought an adjournment on 14 October 2014.
11. The Respondent further contended that the Court did not consider its right to be heard as the hearing proceeded without representation and that it therefore stood to suffer great injustice.
12. In the view of the Respondent, the Claimants would not be prejudiced if the orders sought were granted and that the interest of justice tilted in favour of granting the orders.
13. In opposing the application, the Claimants asserted that the Respondent had frustrated the hearing and determination of the Cause by filing a frivolous application and failing to attend before the Registry in order to fix mutually convenient hearing dates; that hearing notices had been served in good time; that an advocate holding brief for the Respondent sat through the hearing but opted not to participate; that the Court was being asked to sit on appeal of its own decision and that the application was incompetent and a non-starter.
14. Before the hearing on 13 March 2018, this Cause had been placed before Court about 7 times.
15. Out of the 7 times, Mr. Khan appeared in Court only 2 times (when the Cause was coming up for hearing on 24 February 2015 when he sought for time to file an application for security and on 5 March 2015 to get directions on the application).
16. On 18 March 2015, the Court directed the Respondent to file and serve submissions. The submissions were only served on 15 April 2015.
17. On the invitation to fix a mutually convenient hearing date for the Cause, the Respondent received invitations from the Claimants but its representative did not attend before the registry on 30 January 2015, 17 June 2015, 9 March 2016 and ultimately on 23 November 2017 when the hearing was fixed for 13 March 2018.
18. It is apparent to the Court that the Respondent has not been keen to have this Cause determined expeditiously as required by section 3 of this Court's establishing Statute.
19. The Respondent contended that its advocate was before the High Court in Malindi in Misc Cause No. 62 of 2016, but no evidence such as in the form of a cause list was exhibited to the supporting affidavit or

