



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT NAIROBI**

**CAUSE. NO. 735 OF 2018**

**PETER WAWERU MBURU.....CLAIMANT/APPLICANT**

**VERSUS**

**TUSKER MATTRESSES LIMITED.....RESPONDENT**

**RULING**

**Introduction**

1. The application before me is the Claimant's Notice of Motion dated 17.5.2018 which basically seeks the following orders pending the determination of the suit herein:

(a) Lifting of suspension of the claimant from his employment as a Chief Cashier of the respondent.

(b) Payment of Kshs.7,033,124 plus interest being the accumulated salary arrears withheld by the respondent at the rate of Kshs.104,972 per month for 69 months from October 2012 to April 2018.

2. The application is supported by the affidavit sworn by the claimant on the same date and which annexes several documents in support of the claim. The gist of the application is that the applicant was suspended from work by the respondent on 9.10.2012 for 2 weeks to pave way for investigations of a robbery incidence which took place at Tuskeys Supermarket at Digo Road on 29.9.2012. That when he reported back as directed was again instructed to stay away until the criminal charges he was facing in connection with the said robbery were finalized.

3. The applicant contended that during his suspension he was not paid any salary until 11.12.2017 when the criminal charges were terminated with an acquitted. That immediately after he was acquitted, he reported back to work but he was not allowed to resume duty and his demand for salary arrears has upto dated not been paid. He therefore prays for the orders outlined herein above pending trial and final judgment.

4. The application is not opposed and the respondent has so far not filed any defence despite her being served with a summons and the motion. In such circumstances, the orders to grant would be obvious. However, after careful consideration of the time lines from the time of filing and service of the suit, the pleading had not yet lapsed. It is therefore prudent to see whether the respondent was still waiting for the 21 days window given by the rules and the summons to enter appearance. In addition, the order sought by the motion constitutes a major part of the suit and it is necessary for the Court to take evidence. Consequently, I decline to grant the orders sought and direct that the suit be fixed for full hearing unless defence is not filed in which case the matter will go to formal proof.

**Dated, Signed and Delivered in Open Court at Nairobi this 19th day of June, 2018**

**ONESMUS N. MAKAU**

**JUDGE**