



**Mwinzi v Judicial Service Commission (Cause 1311 of 2017)
[2018] KEELRC 1469 (KLR) (14 June 2018) (Ruling)**

Shadrack Mwendwa Mwinzi v Judicial Service Commission [2018] eKLR

Neutral citation: [2018] KEELRC 1469 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1311 OF 2017
HS WASILWA, J
JUNE 14, 2018**

BETWEEN

SHADRACK MWENDWA MWINZI CLAIMANT

AND

JUDICIAL SERVICE COMMISSION RESPONDENT

RULING

1. The Application before Court is dated 31/1/2018 filed by the Claimant/Applicant herein seeking orders that the Respondents' Statement of Response dated 15/11/2017 be struck out for being filed out of time and that the matter should proceed for hearing on formal proof.
2. The Application is supported by the supporting affidavit of the Applicant who has deponed that this case was filed on 11th July 2017 and he extracted summons to enter appearance which he served upon the Respondents on 17.7.2017.
3. That the Respondents were expected to enter appearance and file statement of defence within 21 days of service. However the Respondents never filed their Response until 11.12.2017.
4. The Applicant avers that this was inordinate delay on the Respondents part in breach of the provisions of the law which is an indication that the Respondent is hell bent on delaying this matter hence this Application.
5. The Respondent opposed this Application. They filed their Replying Affidavit on 5/3/2018 and they aver that the Claimant filed his claim on 10.7.2017 and not 11.7.2017 and served upon the Respondents on 17.7.2017. That they were duly instructed by the Respondents on 7.9.2017 and filed Memorandum of Appearance on 18.9.2017 and a response on 11.12.2017.



6. They contend that Rule 13(5) of *Employment and Labour Relations Court (Procedure) Rules*, the Court may on Application by a Party to any proceedings extend or reduce the time within which a responding party may respond to the pleadings.
7. They contend that the delay in filing their Response is excusable as they needed to get instructions on the issue as per their Appendix MM1-1 their dated 8/1/2017 from the Respondent.
8. They aver that they have a substantial response to the Claimants suit which needs this Court to determine and therefore the Application by the Applicant is meant to delay the hearing and determination of this suit on merit.
9. They submit that the delay on the part of the Respondent's Counsel should not be vested against the Respondents.
10. I have examined the averments and submissions of both parties. I note that the orders sought can be granted at the discretion of the Court if there is good cause. The failure to file defence is excusable. In the circumstances, I exercise my discretion and allow defence filed out of time to be part of the documents and to be on record properly.
11. Costs in the cause.

DATED AND DELIVERED IN OPEN COURT THIS 14TH DAY OF JUNE, 2018.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Mugo for Respondent – Present

Claimant – Absent

