



REPUBLIC OF KENYA

EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 1524 OF 2017

(Before Hon. Lady Justice Hellen S. Wasilwa on 25th October 2018)

STEPHEN M. KIENJEKU.....CLAIMANT

VERSUS

UAP OLD MUTUAL GROUP.....RESPONDENT

RULING

1. The Application before Court is the Claimant's Notice of Motion Application dated 17/5/2018 and filed in Court on 21/5/2018 filed under Section 1A, 1B and 3A of the Civil Procedure Act, Cap 21, Order 2 Rule 15(1) (c) and (d), and Order 51 Rule 1 of the Civil Procedure Rules 2010 and all other enabling laws of Kenya.
2. The Claimant seek order to strike out the Statement of Defence filed in Court out of time and for Court to enter judgment in favour of the Claimant as prayed in the Statement of Claim.
3. The Claimant contends that the Defence is evasive and may prejudice, embarrass and/or delay the fair trial of the action. The Applicant contends that the claim was filed on 3.8.2017.
4. The Respondents were served with the claim and summons to enter appearance on 16/8/2017. The Respondents entered appearance on 22/8/2017. The Applicant aver that the Respondents failed to file a defence within 21 days of service.
5. The Respondents opposed this Application. They aver that sometimes in July 2015 there was a merge between UAP Holdings and Old Mutual Holdings Limited, which resulted in the termination of the Claimant.
6. Then in late 2016 and early 2017 the Respondent reviewed its operations and structures with a view to improve its performance. They aver that various changes took place in Respondents structures which resulted in redundancies which affected the Claimant.
7. In relation to this case they aver that they instructed their Counsel Couslon Harney LLP Advocates to act on its behalf and they entered appearance on 22.8.2017 and filed a Statement of Defence on 26.1.2018.
8. They admit filing the defence late but deny that the same is frivolous or vexatious as it raises relevant and material issues. They seek that the Court allows their defence filed late so that justice can be administered to all without undue regard to technicalities.
9. I have examined the averments of both Parties. I believe filing of pleadings within strict timelines is good practice, which aids in case management.
10. I also believe that it would not however be fair to deny a Party a chance to defend suit on account of late filing of pleadings. This is a technicality, which should not be unduly relied upon by the Court to deny a Party a chance to be heard.
11. I decline to allow the application and deem the defence filed to be properly on record. The Claimant will have a chance to respond to it so that justice is done to all.
12. Costs in the cause.

Dated and delivered in open Court this 25th day of October, 2018.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Bwire holding brief for Arunga for Claimant

Akal holding brief for Omondi for Respondent