



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT & LABOUR RELATIONS COURT OF KENYA**

**AT NAIROBI**

**SUIT NO. 222 OF 2010**

**MERCY MORAN VIJEDI.....CLAIMANT**

**VERSUS**

**WAHEEDA DADANI.....RESPONDENT**

**RULING**

1. The Application before me seeks to set aside the order of the court closing the defence case. The Respondent failed to attend at the hearing of the defence case. The motion expressed to be brought under the provisions of Order 51 of the Civil Procedure Rules, Rule 24 and 32 of the Employment & Labour Relations Court (Procedure) Rules 2016 as well Article 50 of the Constitution of Kenya seeks to have the evidence of the Respondent taken as to have the claim disposed of without her evidence would be greatly prejudicial to her. It was supported by the affidavit of Andrew Mengich counsel for the Respondent. The Claimant was opposed and filed grounds of opposition whose tenor was that there was no sufficient basis laid for the orders of the court to be disturbed. The Claimant asserted that the application was frivolous and an abuse of the court process.

2. The Respondent seeks to arrest further proceedings on the basis that she wishes to be heard. For the court to set aside its directive, the Applicant needs to show that the same is not frivolous. The Respondent herein states that she wishes to be heard. The case was last heard before a long hiatus and despite directions that the case be heard in 2016 per my directions on 21<sup>st</sup> July 2016, parties did not proceed with the case for a whole year often failing to attend court as directed by other judges of this court. It is now clear that the Respondent has awoken from her slumber and she is keen to be heard. In view of the rival contentions in the suit and in order for justice to be seen to have been done, I will exercise my discretion and allow the Respondent an opportunity to call evidence. The case will be mentioned before any court here in Nairobi on 16<sup>th</sup> January 2018 for allocation of a hearing date. The proceedings herein may be typed to facilitate further hearing before any other court.

It is so ordered.

**Dated and delivered at Nairobi this 18<sup>th</sup> day of December 2017**

**Nzioki wa Makau**

**JUDGE**