



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAIROBI
CAUSE NO. 551 OF 2012

AVIATION AND ALLIED WORKERS UNION.....CLAIMANT

VERSUS

KENYA AIRWAYS LIMITED.....RESPONDENT

RULING NO. 6

1. When this Cause came up for hearing on 5 September 2012, it was taken out on the request of the Claimant and Respondent. Hearing was set for 26 November 2012.
2. On this latter date, the hearing aborted because the Claimant sought leave to file a *Reply* to the Response which had been filed way outside the deadline set by the Court on 4 July 2012.
3. The next time the Cause came up for hearing on 27 September 2013, the Respondent sought an adjournment on the ground that a hearing notice had been served only 3 days before the hearing (despite invitation, the Respondent had not attended the fixing of hearing date in the registry).
4. On 30 October 2013, the parties consented to adjourn the hearing, and when eventually the hearing was to be taken on 11 December 2014, it could not proceed as the Respondent's advocate was bereaved.
5. The hearing of this Cause thereafter commenced on 14 May 2015, and in the course of the testimony of the Claimant's first witness myriads of applications were made necessitating the Court to make considered rulings.
6. The hearing was adjourned to 23 July 2015, but the hearing could not proceed because the advocate for the Respondent was engaged in the Court of Appeal.
7. When the hearing resumed on 29 July 2015, the Respondent, for the second time sought an adjournment because the advocate was before the Court of Appeal.
8. The Court adjourned the hearing to 16 November 2015 and on this day, the Court allocated the parties hearing time of 10.45am but when the file was called out at 10.45am, none of the advocates were in Court.
9. The advocates however turned up at 10.50 am and the Claimant's case proceeded until the Respondent sought to introduce new documents.
10. The Court allowed the the Respondent 14 days to file the additional documents.
11. On 3 December 2015, the Court rescheduled hearing to 8 March 2016 and 9 March 2016.
12. The hearing did not proceed as the trial Court went on study leave, and the parties agreed to wait for him to resume duty.
13. On 30 January 2018, the Deputy Registrar directed the parties to appear for directions as to hearing, but none of the parties appeared on 5 February 2018.
14. On 25 July 2018, the Claimant did not appear for resumed hearing (after fixing the hearing date), and the Court dismissed the Cause.

15. The Claimant moved Court to set aside the dismissal order and to reinstate the Cause, an application which the Court allowed and fixed hearing for 4 December 2018.

16. When the Cause was called out for hearing on 4 December 2018, the Respondent sought an adjournment on the ground that its advocate had got injured.

17. The Claimant, although not opposing the application for adjournment sought leave to amend the Statement of Claim and file witness statements.

18. The record as set out above indicates that both parties have at one time caused the postponement of the hearing of this Cause and the Court has always indulged them.

19. The Cause has been in the Court's docket for over 6 years now. For an employment/labour dispute, that is an inordinately long time which the Court will not entertain any further.

20. The Claimant has been aware of its case since 2012 and while amendments ought to be allowed generously before conclusion of hearing, in the instant case, the Claimant did not provide sufficient reasons why it wanted to be allowed to amend 6 years after filing of the Cause.

21. The Court will also not entertain any further application which will abort the hearing of the Cause, and in this respect the Court directs/orders

(a) Application for leave to amend Statement of Claim and file witness statements is declined.

(b) If for whatever reason the Claimant will not be ready for hearing at the resumed hearing, its case will be deemed closed.

(c) Hearing of Claimant's case will proceed notwithstanding the absence of the Respondent's advocate on record.

(d) Respondent to present its witnesses at the next hearing and no adjournment will be granted at its behest.

(e) Respondent to pay adjournment fees.

Delivered, dated and signed in Nairobi on this 7th day of December 2018.

Radido Stephen

Judge

Appearances

For Claimant Okweh Achiandoh & Co. Advocates

For Respondent Obura Mbeche & Co. Advocates

Court Assistant Lindsey