



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU

CAUSE NO. 236 OF 2013

(Originally Nairobi Causes Nos. 1073 and 1075 of 2011)

KENYA UNION OF DOMESTIC, HOTELS, EDUCATIONAL

INSTITUTIONS, HOSPITALS & ALLIED WORKERS.....CLAIMANT

v

RIFT VALLEY INSTITUTE OF SCIENCE & TECHNOLOGY.....RESPONDENT

RULING

1. The Kenya Union of Domestic, Hotels, Educational Institutions, Hospitals & Allied Workers (KUDHEIHA) commenced legal proceedings against the Rift Valley Institute of Science & Technology (Respondent) on 5 July 2011, and the issue in dispute was stated as refusal to pay retirement benefits to certain named employees (Richard K. Ngeno, Elijah Tarus, Steve Mutai and Philip Lokorach).
2. On 11 August 2011, the Cause was fixed for hearing on 30 November 2011. The hearing did not proceed because none of the parties appeared before Kosgei J (as he was then).
3. On 27 January 2012, the Cause was fixed for hearing on 24 July 2012. The Respondent was to be notified of the hearing date.
4. KUDHEIHA did not notify the Respondent, and therefore the hearing could not proceed on 24 July 2012. New date for hearing was set for 3 October 2012.
5. Come 3 October 2012, the Respondent was not represented. There is nothing on record to suggest that KUDHEIHA had served the Respondent as directed by Court on 24 July 2012. KUDHEIHA had also indicated it had not brought witnesses.
6. On 27 March 2013, the parties appeared before the Court's registry and by consent fixed the Cause for hearing on 17 June 2013.
7. On 17 June 2013, KUDHEIHA did not attend Court and the Respondent applied to have the Cause dismissed. The Respondent also informed the Court of a related Cause, No. 1073 of 2011.
8. The Court directed both files to be placed before it on 5 July 2013, when an order consolidating the 2 Causes was made. The Court further ordered the file to be transferred to Nakuru.
9. On 30 July 2013, Ongaya J fixed the Cause for hearing on 21 November 2013. The date was fixed in the presence of both parties but it appears the Court did not sit on that date.
10. On 10 December 2013, KUDHEIHA sought leave to amend the Memorandum of Claim. Because the nature of amendment was not disclosed, the Court did not allow the application, but had the Cause fixed for hearing on 20 May 2014.
11. The parties were not ready on 20 May 2014 because they wanted to file further documents. The Court directed KUDHEIHA to file and serve its documents by 27 May 2014, and the Respondent

- within 7 days of service. Hearing was fixed for 3 December 2014.
12. However, KUDHEIHA did not comply with the orders issued by Court, and I directed it to file the documents and computations of dues sought by 11 December 2014.
 13. Again, KUDHEIHA failed to comply with the orders and Ms. Wamae who appeared for KUDHEIHA sought more time.
 14. The Court gave the parties liberty to file any documents and also fixed the Cause for hearing on 17 November 2015. KUDHEIHA was directed to serve a hearing notice.
 15. When the Cause was called out for hearing on 17 November 2015, the Respondent was not represented. Ms. Wamae sought an adjournment and informed the Court that she was not ready to proceed because KUDHEIHA had not served the Respondent with a hearing notice.
 16. The explanation given by Ms. Wamae for failure to serve a hearing notice was that she had been out of the country.
 17. The Court rejected the application for adjournment, but Ms. Wamae insisted on being given more time.
 18. Having declined the application for adjournment, the Court dismissed the Cause and this prompted KUDHEIHA to instruct Ms. Wachira to come on record.
 19. Ms. Wachira then filed an application on 4 December 2015, the subject of this ruling, seeking leave to come on record; review/setting aside of the dismissal order and reinstatement of the Cause.
 20. The Respondent filed grounds of opposition to the application on 15 January 2016, and the motion was taken on 19 January 2016.
 21. Ms. Wachira in submissions in support of application stated that the Court did not give parties notice before dismissing the Cause.
 22. In my view, a notice was not necessary from the Court before it exercised its discretion in dismissing the Cause as KUDHEIHA was represented and it had also been represented when the hearing date was fixed and it was expressly directed to serve a hearing notice.
 23. Counsel also urged that the parties should be given a chance.
 24. As set out in the background herein from the record, there is no doubt that KUDHEIHA had been given time to prosecute the Cause but on 3 different occasions, it had failed to proceed.
 25. It is not only the conduct of KUDHEIHA in prosecuting the cause which has been wanting, but it also failed to comply with peremptory orders of Court as regards the filing and service of documents without any sufficient or reasonable explanation.
 26. It is true Ms. Wamae informed the Court that a hearing notice was not served because she was out of the country.
 27. Now, there was no disclosure as to the period when she was out of the country. And this becomes pertinent when the hearing date was fixed nearly one year before the date set for hearing. KUDHEIHA had more than ample time to serve a hearing notice, and in any case, there was no explanation why it had to be Ms. Wamae herself who could serve the hearing notice.
 28. The conduct of KUDHEIHA not only demonstrates casualness but exhibit a dilatory approach to having disputes determined expeditiously and proportionately. The conduct verges on abuse of the courts process.
 29. Although the Respondent did not put up a strong opposition to the application, and indicated they had agreed to KUDHEIHA paying it thrown away costs of Kshs 10,000/-, in the view of the Court, KUDHEIHA has not demonstrated that it merits the grant of the orders sought.
 30. And Union must be put on notice that they are susceptible to causes of action for negligence in the way they handle disputes concerning membership just as advocates can be sued for professional negligence.
 31. The Court therefore declines the invitation by KUDHEIHA and orders that the motion filed in Court on 4 December 2015 be dismissed with no order as to costs.

Delivered, dated and signed in Nakuru on this 19th day of February 2016.

Radido Stephen

Judge

Appearances

For Union/KUDHEIHA Ms. Wachira instructed by Wachira Wanjiru & Co. Advocates

For Respondent Mr. Simiyu instructed by B.W. Mathenge & Co. Advocates

Court Assistant Nixon