



REPUBLIC OF KENYA
IN THE EMPLOYMENT & LABOUR RELATIONS COURT

AT MOMBASA

CAUSE NO. 701 OF 2015

BETWEEN

NICHOLAS JUMA OJUOK.....CLAIMANT

VERSUS

PENTAGON ELITE SECURITY SERVICES LIMITED.....RESPONDENT

RULING

The Claimant was heard, and closed his case on 29TH July 2016. Hearing proceeded in the absence of the Respondent.

Although served with the Court summons, and subsequently with Mention and Hearing Notices, the Respondent did not file any Statement of Response, or attend Court for hearing.

There appears to have been some problems, between the Respondent and its previous Advocates. The Advocates applied, and were allowed to cease acting for the Respondent on 24th February 2016. The hearing date for the main claim had been scheduled earlier on 8th December 2015.

The Court directed the Claimant to file his submissions within 30 days and Judgment was scheduled for 10.3.2017.

The Respondent has filed an application dated 28th October 2016 seeking to be allowed to file its Response out of time, the annexed Statement of Response deemed duly filed and served, and to have the matter heard afresh. The Application is based on the Affidavit of Respondent's General Manager Patrick Anzaya, sworn on 28th October 2016. It places emphasis on the lack of communication between the Respondent and its previous Advocates, as the reason for non-appearance, and non-attendance in Court.

The Claimant opposes the Application, relying on the affidavit of the Claimant, sworn on 10th November 2016. He states he effected service of all the Court processes on the Respondent. He presented and closed his case. He was given a date for Judgment. The problem between the Respondent and its Advocates should not be allowed to delay Judgment. If Application is allowed, he prays for throwaway costs and/or security.

The Court Finds

1. It is true the Respondent was served with all the Court processes, and failed to comply with

successive orders of the Court.

2. There appears to have been genuine lack of communication between the Respondent and its previous Advocates.

3. It is noted the Claimant has given evidence, closed his case, and been given a Judgment date.

4. Weighing the interests of both Parties carefully, and the need for the Court to observe the principle of substantive justice in administration of justice, the Court orders:-

1. The Respondent is allowed to file and serve its Statement of Response out of time.

2. The Statement of Response attached to the Application shall be deemed as duly filed, and served, upon the Respondent paying the requisite fees.

3. The Claimant be re-called for purposes of cross-examination, and re-examination if need be.

4. The Respondent shall pay to the Claimant throwaway costs at Kshs. 15,000 before the hearing date.

5. Hearing on 23.3.2017.

Dated and delivered at Mombasa this 23rd day of November 2016.

James Rika

Judge