



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT AT NAIROBI
CAUSE NUMBER 2062 OF 2013

BETWEEN

FREDRICK MULWA MUTISO
CLAIMANT

VERSUS

KENYA COMMERCIAL BANK LIMITED.....
RESPONDENT

RULING

The Claimant commenced proceedings against the Respondent by way of a Statement of Claim filed on 24th December 2013.

He was first employed by the Respondent Bank on 7th May 2001 in the position of Head of Change Programme in the Finance and Planning Division, based at the Head Office in Nairobi.

He rose through the ranks to become the Director of Audit on 1st June 2011. He worked up to 20th June 2013, when the Respondent wrote to him a letter of termination of employment. The Respondent alleged the Claimant's position had become redundant. This necessitated the commencement of the proceedings, in which the Claimant seeks:-

- (a) Kshs.142,125,675 in future salaries, which he expected to earn until he retired at the age of 60 years.
- (b) 12 months' salary in compensation.
- (c) Any other suitable remedy, costs and interest.

The Claimant states he served the Statement of Claim and Summons to Enter Appearance on the Respondent's Legal Department, on the 27th December 2013.

The Respondent engaged the Law Firm Hamilton Harrison & Mathews Advocates, who filed a Notice of Appointment of Advocates on 9th January 2014.

By 30th January 2014, there was no Statement of Response filed.

The Claimant filed an application under rule 16(1) (2) and 27(g) of the Industrial Court (Procedure) Rules 2010. He asks the Court to enter Judgment in favour of the Claimant for the sum of Kshs.142,125,675,

make any other suitable order, and give order on costs. The application is based on the affidavit of Mr. Lenny O.O. Oyombra, Advocate for the Claimant, sworn on 28th January 2014. The application was argued *ex parte* on the 11th February 2014.

The Court Finds and Orders:-

1. The Industrial Court (Procedure) Rules 2010, do not contemplate entry of Judgment or Award in default of a Statement of Response.
2. Rule 16 which has been invoked by the Claimant only allows the Court to entertain *ex parte* applications if delay in hearing the Applicant would cause irreparable or serious mischief.
3. Rule 16 (2) demands that a party shall, before filing of a motion, notify all the parties of the intended motion.
4. The Claimant has not shown the Court what irreparable or serious mischief he stands to suffer, if the *ex parte* order sought is not granted. Secondly, he has not shown that he notified the Respondent of his intention to file the motion, before he filed that motion.
5. Rule 16 (7) requires the Court to discourage interlocutory applications where the subject matter of the suit can be disposed by hearing and determining the Claim without prejudicing the applicant.
6. The Industrial Court (Procedure) Rules 2010, are crafted in such a way as to encourage resolution of labour disputes with the full participation of all the involved parties. The purpose of these Rules is to enable the Court administer substantive justice.
7. The Claimant seeks substantial amounts of money from the Respondent, and has raised very weighty legal and factual matters, which the Court should refrain from assuming a position on, even momentarily, as would be the result if the Court imports the procedure on interlocutory default decisions from the civil system, and enters interlocutory Award or Judgment. The Claimant must instead seek directions of the Court on the hearing of the Claim, and endeavor to set down the dispute for hearing.

IT IS ORDERED:-

- (a) *The application dated 23rd December 2013 is rejected.***
- (b) *The claimant shall move the Court for directions before setting the hearing date of the substantive Claim.***
- (c) *The Claimant shall notify the Respondent's Advocates on record of such future steps that he may take in prosecution of the Claim.***

Dated and delivered at Nairobi this 20th day of February 2014

James Rika

Judge