



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA AT NAIROBI
CAUSE NO 1105 OF 2013

MILLICENT LIANI.....CLAIMANT

VS

CATAPULT BRAND CONSULTING LIMITED.....RESPONDENT

RULING

1. This ruling flows from the Notice of Motion filed by the Respondent on 22nd November 2013 seeking to substitute the statement of response dated 15th November 2013 with the draft statement of response attached to the Notice of Motion. In the alternative, the Respondent seeks leave to amend the statement of response already filed.
2. The Respondent's application is based on the following grounds:
 - a. That the statement of response dated 15th November 2013 was an unapproved working draft which was inadvertently filed and is therefore an incorrect statement.
 - b. That the draft statement of response attached to the Notice of Motion dated 23rd September 2013 is the approved final version of the statement of response that ought to have been filed.
 - c. That the incorrect statement of response was filed as a result of a genuine error on the part of the Respondent.
 - d. That the incorrect statement of response omitted crucial responses that support the Respondent's case.
 - e. That the incorrect statement of response omitted a counterclaim by the Respondent which is crucial to the case.
 - f. That the draft statement of response and counterclaim attached to the Notice of Motion raises triable issues that the Court ought to make a determination on.
 - g. That the Respondent has come to Court within a reasonable period of time and without undue delay.
 - h. That the application will not occasion any prejudice to the Claimant.
 - i. That if the application is not allowed the Respondent will suffer prejudice.
 - j. That it is in the interest of justice that the application be granted as prayed.

3. Mr. Ranja for the Respondent urged the Court to allow regularisation of the court record by inclusion of the Respondent's counterclaim. He submitted that inadvertence by Counsel should not be visited on the client.

4. Mr. Ombete for the Claimant opposed the Respondent's application stating that the Respondent had occasioned delay in this matter. Having been served with the Claimant's claim on 6th August 2013, the Respondent entered appearance on 14th August 2013 but failed to file a response until the Claimant filed an application for default judgment.

5. The Respondent then filed an application for leave to file a response out of time to which Counsel for the Claimant conceded. The draft statement of response annexed to the application for extension of time included a counterclaim but on 15th November 2013, the Respondent filed a statement of response which excluded the counterclaim.

6. According to Counsel for the Claimant there was no error on the filed statement of response which was an accurate reproduction of the draft statement of response save for the omission of the counterclaim which according to Counsel for the Claimant was a deliberate move by the Respondent.

7. Rule 14 (6) of the Industrial Court (Procedure) Rules, 2010 provides that:

(6) A party may, with the leave of the Court, amend pleadings:

Provided that where leave is granted to a party to amend any pleading, a responding party shall have a corresponding right to amend that party's pleadings.

8. Having fully considered submissions and deponements made on behalf of the parties, I am satisfied that the omission of the Respondent's counterclaim from the statement of response filed on 15th November 2013 was an honest mistake on the part of the Advocates for the Respondent.

9. I am further persuaded that it is in the interest of justice that the Respondent be allowed to plead his counterclaim. I therefore grant leave to the Respondent to amend its response within the next 7 days from the date of this ruling. The Claimant is granted corresponding leave to file a reply to the amended response within 7 days from the date of service.

The Respondent will pay the costs of this application.

Orders accordingly.

DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 12TH DAY OF FEBRUARY 2014

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JUDGE

In the Presence of:

.....*Claimant*

.....*Respondent*

