



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA AT NAIROBI
CAUSE NO. 1511 OF 2011

PHILIP OBILA ODUORCLAIMANT

VERSUS

MOSOTA ENTERPRISES LIMITEDRESPONDENT

RULING

1. On 20th June 2014, the Claimant filed their application through Notice of Motion under the provisions of Rule 13 and 14 of the Industrial Court (Procedure) Rules seeking for orders that leave be granted to enable the Claimant file a reply to the Respondent's response. The application is supported by the annexed affidavit of the claimant. The respondent filed their Grounds of Opposition to the application. Both parties filed their written submission with regard to the application.
2. The application by the Claimant is based on the grounds that the claimant's advocate inadvertently failed to inform the Claimant that there was a counter-claim attached to the Respondent's memorandum of response as filed and there is great need to reply therein. The Respondent will not suffer any prejudice as the suit as not proceeded for hearing.
3. In opposition the Respondent state that the application by the Claimant is an abuse of the Court process aimed at wasting Court's time since it is close to three years since the Claimant was served with the defence and counter-claim and has not filed any response. There are no good reasons for the inordinate delay.
4. The claim herein was filed on 6th September 2011 while the defence and counter-claim were filed on 5th October 2011. When parties were to appear before Court for directions on 3rd November 2011, none was in attendance. On 8th November 2012, both parties were in Court when the Claimant applied to file their amended claim and file a defence to the counter-claim. This was not done until the current application after a period of over 20 months later.
5. There are timelines set for parties to file and exchange pleadings. That is why Rules of procedure exist to regulate such matters. These Rules of procedure are not an act in futility as where parties are left at large to do as they wish; justice will not be rendered both ways. This is particular so in an employment relationship where both parties have equal rights before the Court as well as any union or employer organisation. To therefore apply to file any pleading out of time, there must be a good basis. Such an application should also not be done in a manner to prejudice a respondent who by the nature of the application would be prejudiced in time and the new claim.

6. Pleadings sought to be amended before a hearing should be freely allowed if the same are done without causing injustice to the other party. This does not mean such introduction is to allow a new case or the substitution of the original claim. This can be allowed as late as before judgement is made. This therefore gives parties a wide berth within which to enjoy the Rules on pleadings and amendments.

7. The pleadings sought to be introduced are attached to the claimant's application and placed before the respondent to defend and all parties will have a chance to give their evidence the Court will determine the issues on merit based on the Court jurisdiction and the powers granted to this Court as under Section 3 of the Industrial Court Act.

8. I therefore find no prejudice that the respondent will suffer where the reply to the counter-claim is admitted, they have a counter-claim that could have been prosecuted with the 20 months the Claimant was inactive but did not take such action. The inordinate delay is however not justified.

Application dated 20th June 2014 is allowed save that costs are awarded to the respondent.

Delivered in open Court at Nairobi this 7th Day of October 2014

M. Mbaru

JUDGE

In the presence of;

Lilian Njenga: Court Assistant

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