



**REPUBLIC OF KENYA**  
**IN THE INDUSTRIAL COURT OF KENYA AT MOMBASA**

**CAUSE NO. 115 OF 2012**

**(Originally Nairobi Cause No. 1914 of 2011)**

**DAVID KABORI RIMBERIA.....CLAIMANT**

**v**

**SUMMIT COVELINES CO LTD.....1<sup>st</sup> RESPONDENT**

**JOSEPH MUTHAMIA KIREMA .....2<sup>nd</sup> RESPONDENT**

**RULING**

1. This Cause first came up before Chemmutut J on 7 February 2012 and while the Claimant was represented there was no representation for the Respondent. The Judge set 16 August 2012 for hearing. The Cause never proceeded to hearing but the parties consented in the registry for the hearing to proceed on 9 November 2012.
2. On 9 November 2012 the file was placed before Nduma J but only the Respondent was present and they made an application for the transfer of the Cause to Mombasa. The Judge allowed the application to transfer the file and set a mention date for 16 November 2012.
3. On 16 November 2012 none of the parties appeared when the file was mentioned before me. I directed that the file be transferred to Mombasa as directed by Nduma J with notice to issue to the parties and set a mention for 3 December 2012.
4. On 3 December 2012 Mr. Akanga appeared for the Claimant while the Respondents' were not represented. I fixed hearing for 18 December 2012 with an order to the Claimant to serve a hearing notice upon the Respondent.
5. On 18 December 2012 all the parties were represented and the Cause was stood over to 25 July 2013 because the Claimant was out of the country. On 30 May 2013 the Claimant caused the matter to be mentioned before me on 7 June 2013 for purposes of having the hearing date brought back because the Claimant was expected back into the country for a brief visit.
6. On 11 June 2013 I directed that hearing would proceed on 20 June 2013 and directed the Claimant to serve the Respondents with a hearing notice. On 20 June 2013 the hearing was adjourned on the application of the Respondents' to 27 June 2013.
7. On 27 June 2013 the hearing proceeded with the Claimant taking to the dock. I thereafter adjourned the hearing to 28 June 2013. After finishing with the Claimant Mr. Akanga informed me he had another witness and I directed the Claimant to file and serve the witness statement of the other witness upon the Respondents. I adjourned the hearing to 29 August 2013.
8. On 29 August 2013 when the Cause was called up Mr. Nyange held brief for a Mr. Alera for the Claimant while Mr. Gakuo held brief for E Njeru & Co. Advocates for the Respondent.
9. Mr. Nyange informed me that the parties had agreed to take out the matter because the date was not convenient. Mr. Gakuo confirmed that position.
10. The approach and method taken by the parties was not satisfactory. It is not upon Counsels to

- agree on which matters proceed to hearing or not. It is the Court which is mandated to manage its diary and any agreements reached by Advocates must be brought to the attention of the Court for it to give directions.
11. It cannot be true that the hearing date which was fixed on 29 August 2013 was not convenient to the Advocates. The date was taken in their presence and only they had the knowledge of their diaries. They concurred on the suitability of the date.
  12. The counsels holding brief for the parties' Advocates on record did not give any reason at all on why the date turned out to be inconvenient or why the Cause should be adjourned.
  13. I refused to grant an adjournment and directed that the Cause would proceed to hearing at 2.30 pm. At 2.30 pm none of the Advocates on record were in Court when the Cause was called out.
  14. The adjournment of hearing is discretionary and a party seeking one must give sufficient grounds for seeking of such adjournments. The advocates holding brief for the parties' counsels on record did not give any reason at all as to why the date was not convenient or as to why an adjournment was merited.
  15. Rule 22(b) & (c) of the Industrial Court (Procedure) Rules, 2010 provide that the Court may proceed with the case before it in the absence of any party thereto if that party fails to appear at the hearing without providing any reasons, or the Court is satisfied that the reasons given by a party are not of such a nature as to prevent the attendance of the party.
  16. In the present case, no reasons were given as to why the parties felt the date was inconvenient or why an adjournment was merited.
  17. The Cause is part heard. In its endeavors to do justice the Court should not visit injustice towards litigants. But in the instant case the Advocates on record conduct has not been professional and has been dilatory.
  18. I therefore dismiss the Cause with no order as to costs.

**Delivered, dated and signed in open Court in Mombasa on this 27<sup>th</sup> day of September 2013.**

**Justice Radido Stephen**

**Judge**