



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT & LABOUR RELATIONS**

**COURT OF KENYA AT NAIROBI**

**CAUSE NO. 2273 OF 2015**

**ISAIAH MWANIKI MATHENGE.....CLAIMANT**

**VERSUS**

**CHINA ROAD & BRIDGE CORPORATION.....RESPONDENT**

**RULING**

1. The Respondent/Applicant filed a Notice of Motion Application dated 14<sup>th</sup> October 2021 seeking to be heard for orders that the proceedings and the court's orders of 20<sup>th</sup> September 2021 closing the defence case and all consequential orders, be reviewed and/or set aside. Further, that the Court be pleased to order the reopening of the Defence case. The Application is based on the grounds that Counsel for the Respondent/Applicant was ready to proceed with five witnesses when the matter came up for hearing of defence case on 20<sup>th</sup> September 2021 but the call into the virtual court session when the Judge was about to begin the days call over. That considering the matter had been listed first on the cause list, when they re-joined the session after several attempts they found the Judge had adjourned the virtual session and directed that parties scheduled for hearing appear in court physically. That their efforts to reach the Judge's Court Assistant through her mobile number were also futile and that information from the court's registry also affirmed that all listed hearings were being heard in open court. That however when they proceeded to the courts together with three of the Defence witnesses who were ready to proceed, they were informed that the defence case in the matter had been closed due to non-appearance and parties directed to file their submissions and a mention date of 28<sup>th</sup> October 2021 was set in the absence of both Counsel for parties to confirm compliance with the filing.

2. The Applicant asserts that the Honourable Court gave the said orders without due regard to the Respondent/Applicant's case or any directions as to how to treat the evidence that was to be tendered in the matter by the defence. The Respondent asserts it has raised triable issues in its Memorandum of Response and will be prejudiced if the intended witnesses are not examined whereas the Claimant will not be prejudiced in any way should the defence case be reopened in the interest of justice. It contends that it will be condemned unheard contrary to the rules of Natural Justice if the said proceedings and consequential orders are not reviewed or set aside and that the same will occasion it irreparable harm. The Application is supported by the Affidavit sworn on 9<sup>th</sup> October 2021 by the Respondent/Applicant's Human Resource Manager, Veronica Ouko who reiterates the grounds of the application and avers that it is only fair and just that the Application is allowed as an end to justice. The Application elicited no response from the Claimant who also did not attend its hearing on 25<sup>th</sup> November 2021.

3. The Court directed parties through a notice on the Kenya Law website at [www.kenyalaw.org](http://www.kenyalaw.org) on the conduct of hearings and so on. This information has been in the public domain since September 2021 and on the daily cause lists from that time prominently display this notice. It is therefore preposterous for the defendant to suggest it only became aware of the hearing of cases in open Court on the morning of the hearing. Such lies never assist a party seeking equity. Application is devoid of merit and is dismissed with no order as to costs since the Claimant did not bother to oppose it. Directions as to filing of final submissions to follow the delivery of this Ruling.

It is so ordered.

**DATED AND DELIVERED AT NAIROBI THIS 20TH DAY OF DECEMBER 2021**

**NZIOKI WA MAKAU**

**JUDGE**



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