



REPUBLIC OF KENYA

EMPLOYMENT & LABOUR RELATIONS COURT OF KENYA

AT KERICHO

CAUSE NO.102 OF 2016

(Before D. K. N. Marete)

KENYA UNIVERSITIES STAFF UNION

MOI UNIVERSITY CHAPTER.....CLAIMANT

VERSUS

KENYA UNIVERSITIES STAFF UNION

NATIONAL EXECUTIVE COMMITTEE.....RESPONDENT

RULING

This is an application by the claimant/applicant dated 5th June, 2018 and seeks the following orders of court;

- (i) THAT this honorable court be pleased to set aside the Orders dismissing the Claimant's claim for want of prosecution.*
- (ii) THAT cost of this application be provided for.*

The motion is grounded as follows;

- a) THAT the Claimant's advocate had a mechanical problem on the way from Nakuru to kericho.*
- b) THAT the Claimant's advocate arrived late in court.*
- c) THAT the failure to attend court was not intentional*

The respondent in a Replying Affidavit sworn on 14th June, 2018 opposes the application.

It is her position and averment that on 12th April, 2018 the parties fixed a hearing date of the matter for 28th May, 2018. This was done in court in the presence of counsel for the parties. At the hearing, neither the applicant's representative nor his advocates were present in court thereby prompting a dismissal for want of prosecution.

The respondent further avers and submits that the applicant has not been interested in prosecuting this matter since its inception on 27th May, 2016. In the instant case, the applicant has not provided any verifiable explanation for failure to attend court on the material date. He has not in any way offered a justifiable reason to sustain this cause.

The respondent in the penultimate deems and submits that this application is an abuse of the process of court and further seeks to obstruct the cause of justice. Further, to allow this application would be repugnant to good practices and timely administration of justice.

Lastly, allowing the application would be a case of equity aiding the indolent and extremely prejudicial to the interest of the respondent.

I agree with the respondent. The claimant/applicant has been overtly indolent. He has not shown any vigour in prosecuting her claim. This application is not merited for sustenance, or at all.

I am therefore inclined to dismiss this application with orders that each party bears their own costs of the application.

Delivered, dated and signed this 29th day of June 2018.

D.K.Njagi Marete

JUDGE

Appearances

1. Mr. Ombati instructed by Ombati & Company Advocates for the claimant.
2. Miss Imbaya instructed by Ondenye, Maube & Company Advocates for the respondent.