



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

CAUSE NO. 322 OF 2013

LEJAALE L. MAURA.....CLAIMANT

v

SINOHYDRO CORPORATION LTDRESPONDENT

RULING

1. On 6 November 2018 when the Cause came up for hearing and in the absence of the Claimant, the Court dismissed the Cause herein upon an oral application by the Respondent.
2. The reasons for the dismissal were because the Claimant had failed to comply with orders issued on 2 March 2016, and for want of prosecution.
3. On 14 February 2019, the Claimant moved the Court seeking an order setting aside the dismissal order.
4. The reasons advanced in support of the application were that he and the advocate were not aware of the hearing on 6 November 2018 and that they only became aware of the dismissal on 30 January 2019.
5. The Respondent did not respond to the Motion.
6. Oblivious to the dismissal and the pending application on file, on 8 June 2021, the Deputy Registrar fixed the Cause for hearing on 24 November 2021.
7. When the Cause was called out for hearing, the Court notified the Claimant of the earlier dismissal, and it is only then that the Claimant disclosed that the instant Motion was still pending.
8. The Court has considered the Motion, supporting affidavit and the record.
9. On 5 July 2018, the Court fixed the Cause for hearing on 19 March 2019. The Claimant's advocate was present.
10. However, on 26 October 2018, the Deputy Registrar wrote to the parties informing them that the hearing had been rescheduled to 6 November 2018 (during the service week to deal with old suits).
11. The notification was sent to the Claimant's advocate through post (P.O. Box 16418, Nakuru).
12. The advocate has not denied the ownership of the postal address nor deposed as to whether the notification was received or not.
13. The Court also notes from the record that on 2 March 2016, the Claimant sought and obtained leave to file supplementary list of documents within 21-days.
14. The Claimant did not comply with the order.
15. On 13 December 2016, when the Cause came up for hearing, the Claimant and his advocate were absent and the Respondent prayed for the Cause to be dismissed.
16. Instead, the Court indulged the Claimant and directed that he pays adjournment fees and Respondent's costs for the day.
17. There is nothing on record to show that the adjournment fees and costs were paid.

18. The conduct of the Claimant of not complying with court orders has not been diligent. It has been wanting and the Court declines to exercise its discretion in his favour.

19. The Motion filed in Court on 14 February 2019 is dismissed with no order on costs.

DELIVERED THROUGH MICROSOFT TEAMS, DATED AND SIGNED IN KISUMU ON THIS 23RD DAY OF FEBRUARY 2022.

RADIDO STEPHEN, MCIARB

JUDGE

Appearances

For Claimant Mboga G.G. & Co Advocates

Respondent did not participate

Court Assistant Chrispo Aura