



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR

RELATIONS COURT AT NAIROBI

CAUSE NUMBER 2490 OF 2016

BETWEEN

HELLEN ANYONA IMBUSI.....CLAIMANT

VERSUS

SECURKENYA GROUP LTD.....RESPONDENT

RULING

1. This Cause was dismissed for want of prosecution, on 10th June 2021.
2. The Claimant's Advocate was not in the Virtual Court at the time the Cause was dismissed.
3. He later in the day, joined the Court, explaining to the Court that he had technical problems joining the session, earlier on. He immediately sought review of dismissal order.
4. His Counterpart for the Respondent had already logged off, and the Court advised Claimant's Advocate to consult Respondent's Advocate, or present a formal Application, on review of dismissal order.
5. The Claimant filed that Application dated 25th June 2021, seeking review and setting aside of the order made on 10th June 2021. That Application is the subject of today's Ruling.
6. It is supported by the Affidavit of Claimant's Advocate, Peter Mwaura Kamau, sworn on 25th June 2021. He explains that he had technical problems in the virtual hearing of 10th June 2021. He could hear what the Court and the Respondent's Advocates were saying, but he could not communicate. He managed to change devices and connect with the Court, but found the matter had already been dealt with. The Court advised he consults Respondent's Advocate, or files this Application. He contacted the Respondent's Advocate, who was of the view that the Claimant files a formal Application.
7. On the alleged delay in prosecuting the Claim, the Claimant's Advocate explains that he was appointed on 22nd March 2017. He has written invitations to the Respondent's Advocates to fix a hearing date. He wrote on 11th February 2019, 25th September 2019 and 12th August 2020. The Court was not able to supply a hearing date.
8. The Court directed that the Application is dealt with through Written Submissions. The Respondent does not appear to have filed Submissions. Instead the Respondent filed a Notice of Change of Advocates dated 4th November 2021. No Submissions are shown to have been filed and served by the new Advocates for the Respondent.

The Court Finds: -

9. The Application dated 25th June 2021, filed by the Claimant is not opposed.
10. There is adequate explanation on the part of the Claimant's Advocate, for failure to participate from the outset, in the hearing of 10th June 2021.
11. There was a technical hitch, but as soon as the Claimant's Advocate was able to fully log in, he sought the directions of the Court.

12. On the Notice to Show Cause why the Claim should not be dismissed for want of prosecution, the Claimant has shown why, through the letters inviting the Respondent to fix a hearing date. There are 3 letters, which in the view of the Court, demonstrate a willingness on the part of the Claimant to prosecute. It may be that the Court did not assign a hearing date, due to congestion in its hearing calendar.

IT IS ORDERED: -

a. The Application dated 25th June 2021, filed by the Claimant, is allowed.

b. Parties to schedule the matter for pre-trial directions and fix the Claim for hearing, in the course of this year- 2022.

c. Costs in the cause.

DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY, AT NAIROBI, UNDER THE MINISTRY OF HEALTH AND JUDICIARY COVID-19 GUIDELINES, THIS 17TH DAY OF FEBRUARY 2022.

JAMES RIKA

JUDGE