



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAKURU

ELRC CAUSE NUMBER 297 OF 2015

JOSEPH KIPCHUMBA TOROREI.....CLAIMANT

-VERSUS-

CATHOLIC DIOCESE OF NAKURU.....RESPONDENT

(BEFORE HON. JUSTICE DAVID NDERITU)

RULING

1. INTRODUCTION

1. On 24th September, 2021 the court issued a Notice to show Cause (NTSC) why this cause should not be dismissed for want of prosecution.
2. The said NTSC came up for hearing on 12th October, 2021 when neither party nor Counsel appeared and the cause was dismissed for want of prosecution with no orders as to costs.
3. On 27th October, 2021 the Claimant filed a Notice of motion dated 26th October, 2021 seeking, *inter alia*, reinstatement of the cause. The said application is supported by an affidavit sworn by **JOSEPH KIPCHUMBA TOROREI**, the Claimant, sworn on 26th October, 2021 and there are several annexures thereto.
4. The Respondent filed a replying affidavit purportedly sworn by **GEDION GICUHI NDUNG’U** but there is no date indicating when the deponent swore the same.
5. The Claimant swore a further/supplementary affidavit on 7th December, 2021.

II. LAW

6. The NTSC was issued by court in accord with **Order 17 rule 2(1) of the Civil Procedure Rules and Rule 16 (1) of the Employment and Labour Relations Court (Procedure) Rules, 2016.**
7. The court issued the NTSC *suo motto* and the same came up in court for hearing on 12th October, 2021 when neither party appeared and the court dismissed the cause for want of prosecution with no orders as to costs.
8. It is the dismissal alluded to above that the Claimant is now seeking to overturn.

III. DISPOSAL

9. The law cited above gives either of the parties a leeway to take an appropriate action in either prosecuting the cause or applying for dismissal of the cause in the event of a prolonged dormancy in a matter.
10. This court has carefully and dutifully gone through the affidavits sworn by either side. While the Claimant has attributed non-attendance on 12th October, 2021 to a technical hitch in the gadgets used by his counsel, he has also explained the delay in prosecuting the cause.
11. The reason given may not be convincing but the Claimant has explained his willingness to now prosecute the cause without undue delay.

12. Although the Respondent is in support of the dismissal, it did not on its part take any steps to have the cause dismissed but waited for the court to act *suo motto*. The Respondent is hence equally to blame for the delay.

13. In the circumstances, and in the interest of justice and fairness, and in line with the provisions of **Sections 1A, 1B, 3, and 3A of the Civil Procedure Act (Cap 21) and Section 3 of the Employment and Labour Relations Court Act**, the Notice of motion dated 26th October, 2021 is hereby allowed in terms of prayers (a) and (b) with no orders as to costs.

14. This cause shall now be fixed for hearing on priority basis without further delay or unnecessary adjournments.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 31ST DAY OF MARCH, 2022.

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DAVID NDERITU

JUDGE