



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT NAIROBI**

**CAUSE NUMBER 1936 OF 2016**

**BETWEEN**

**GRACE AYIEMBA AMISI.....CLAIMANT**

**VERSUS**

**RAMBAI RABADIA KARSAN.....RESPONDENT**

**RULING**

1. This Claim was filed in the year 2016.
2. It was dismissed on 10<sup>th</sup> May 2021, for want of prosecution.
3. The Claimant filed an Application dated 12<sup>th</sup> May 2021, supported by the Affidavit of Claimant's Advocate, George Omwansa Okenyo, of the same date, seeking to have the Claim reinstated.
4. The main ground cited in support of the Application, is that the Claimant was not served with the Notice to Show Cause why, the Claim should not be dismissed for want of prosecution.
5. Mr. Okenyo states that he had applied for hearing dates from the Court, on 17<sup>th</sup> February 2021 and 1<sup>st</sup> April 2021. The relevant e-mails to the Court are exhibited.
6. The Application is opposed through the Replying Affidavit of the Respondent, sworn on 27<sup>th</sup> October 2021.
7. He states that although the Claim was filed in 2016, it was not until 2018, that he was served with the Summons and the Statement of Claim. The Claim was not prosecuted, and the Court issued a Notice, asking the Claimant to show cause why the Claim should not be dismissed for want of prosecution. On 10<sup>th</sup> May 2021, the Claimant and his Advocate did not attend Court, to show cause why the Claim should not be dismissed. It is not true that the Claimant did not have service of the Notice. Service was effected by the Court Process- Server.
8. It was agreed that the Application is considered and determined through Written Submissions, which the Parties confirmed to have filed and exchanged, at the last appearance before the Court, on 14<sup>th</sup> December 2021. It was indicated by error on the record, that the Claim is due for Judgment. The record is corrected to indicate that the Claim is due for a Ruling today.

**The Court Finds: -**

9. There is an Affidavit of Service filed by Court Process- Server, Valentine Kaiga, establishing that the Notice to Show Cause from the Court, dated 10<sup>th</sup> February 2021, was served upon the Claimant. It was served via e-mail, on 17<sup>th</sup> March 2021. It was served to the Advocates for both Parties.
10. The Claimant's Advocate does not dispute that the e-mail address, [okenyoomwansaadvocates@gmail.com](mailto:okenyoomwansaadvocates@gmail.com), upon which the Notice was served for the Claimant, is his address. If he did not attend Court, it is not for want of service.
11. Non-attendance however, does not justify the order of dismissal for want of prosecution. This is because there is evidence, at the disposal of the Court, to show that the Claimant has taken steps to prosecute.

12. On 30<sup>th</sup> October 2019, the Claim was mentioned in Court. The Claimant told the Court she had met all pre-trial requirements. The Respondent had not, and was given more time, with mention rescheduled for 4<sup>th</sup> December 2019. On this date, Parties confirmed full compliance. The Claim was placed before the Judge on 29<sup>th</sup> January 2020, certified ready for hearing and directions issued, to have a hearing date give at the Registry.

13. The Claimant's Advocate wrote to the Court on 17<sup>th</sup> February 2021 asking for a hearing date. The Court, through its e-mail address [elrcnairobidates@gmail.com](mailto:elrcnairobidates@gmail.com) wrote back on 18<sup>th</sup> February 2021 stating, ‘ *well received, we will be working on your request.*’

14. The Court does not appear to have acted on the Claimant's request, because on 1<sup>st</sup> April 2021, the Claimant's Advocate wrote again asking to be availed a hearing date. There does not appear to have been a response from the Court on this occasion.

15. It was wrong for the Court, to instead issue a Notice to Show Cause why the Claim should not be dismissed for want of prosecution, a month later on 10<sup>th</sup> May 2021.

16. The Claimant did not fail to prosecute; the Court did not avail him a date to prosecute.

17. If there was delay in serving the Summons and the Statement of Claim at the inception, that was not the subject of the Notice to Show Cause, which led to the orders of 10<sup>th</sup> May 2021. The Respondent received the Summons and the Statement of Claim, filed his Response, and the Claim was certified ready for hearing. Late service of the Summons and the Statement of Claim, was not the issue subject of the dismissal for want of prosecution.

**IT IS ORDERED:** -

*a. The orders made on 10<sup>th</sup> May 2021 dismissing the Claim for want of prosecution are set aside and the Claim reinstated.*

*b. Hearing date to be given at the Registry on an accelerated basis.*

*c. No order on the costs.*

**DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY, AT NAIROBI, UNDER THE MINISTRY OF HEALTH AND JUDICIARY COVID-19 GUIDELINES, THIS 29<sup>TH</sup> DAY OF MARCH 2022.**

**James Rika**

**Judge**