



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT NAIROBI**

**CAUSE NO 2407 OF 2016**

**SISANO BILDAD.....CLAIMANT**

**VERSUS**

**MISKY INVESTMENT LIMITED.....RESPONDENT**

**RULING**

1. This ruling responds to the Claimant's application brought by Notice of Motion dated 14<sup>th</sup> July 2021, seeking review and/or setting aside of an order made by **O.N. Makau J** on 17<sup>th</sup> June 2021, dismissing the claim.
2. The application is supported by an affidavit sworn by the Claimant's Counsel, Patrick Waiganjo Wachira and is based on the following grounds:
  - a) That the order of dismissal made on 17<sup>th</sup> June 2021 was not through the Claimant's fault but was due to unforeseen circumstances;
  - b) That failure by the Claimant's Counsel to attend court on 17<sup>th</sup> June 2021 was not deliberate as it was caused by a technical hitch in joining the virtual court;
  - c) That the Claimant has satisfactory reasons why the matter should not have been dismissed for want of prosecution in the first place;
  - d) That the application has been made without undue delay;
  - e) That the Respondent will not suffer any prejudice if the order sought is granted;
  - f) That it is in the interest of justice to grant the order sought.
3. In the affidavit in support of the application, Counsel for the Claimant states that the matter forms part of a series of matters with *Cause No 2397 of 2016*, being a test suit.
4. The Respondent's response to the application is contained in a replying affidavit sworn by its Managing Director, Hindi Santur Ali, on 15<sup>th</sup> January 2022.
5. Ali depones that it is Counsel for the Claimant who fixed the matter for hearing but having served Counsel for the Respondent, did not attend court on 17<sup>th</sup> June 2021.
6. Ali further depones that the Claimant has not given any good reason for his absence. He adds that there is no evidence that the Claimant or his Counsel had logged in for the court session.
7. Ali points out that for more than six years from the date of filing, the Claimant has never bothered to set down the suit for hearing. He adds that the application for reinstatement of the suit has been filed one month after the dismissal.
8. The Respondent takes the view that the Claimant has been complacent in prosecuting his claim.

9. In prosecuting his application, the Claimant states that this claim was consolidated with *Cause No 2397 of 2016: Salome Gathoni Njiru v Misky Investment Limited*.

10. I have had occasion to peruse the court file in *Cause No 2397 of 2016* and note that pursuant to an application by the Claimant in that Cause, dated 26<sup>th</sup> January 2017, an order for consolidation was issued. The effect of this order is that Causes No 2397 of 2016, 2398 of 2016, 2399 of 2016 and 2407 of 2016, were consolidated with Cause No 2397 of 2016 as the lead file.

11. This fact appears not to have been brought to the attention of the Court at the time the present cause was dismissed for want of prosecution. For this reason, I am persuaded to set aside the dismissal order issued on 17<sup>th</sup> June 2021 and to reinstate the claim, which will now await the outcome in *Cause No 2397 of 2016*.

12. The costs of this application will be in the cause.

13. Orders accordingly.

**DELIVERED VIRTUALLY AT NAIROBI THIS 10<sup>TH</sup> DAY OF MARCH 2022**

**LINNET NDOLO**

**JUDGE**

Appearance:

Mr. Waiganjo for the Claimant

Miss Jiseve for the Respondent