



REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS COURT OF KENYA

AT NYERI

CAUSE NO.261 OF 2017

(Before D.K.N.Marete)

KENYA UNION OF DOMESTIC, HOTELS,

EDUCATION INSTITUTIONS, HOSPITAL AND ALLIED WORKERS.....CLAIMANT

VERSUS

SOCIAL SERVICE LEAGUE M.P SHAH HOSPITAL.....RESPONDENT

R U L I N G

This is an application dated 23rd March, 2021 and seeks a dismissal and or variation of earlier court orders dismissing the application to reinstate suit on 13th October, 2021.

The Claimant/Applicant's case is that her application for reinstatement of suit dated 29th July, 2020 was dismissed on grounds of want of prosecution and non-attendance. It is her case that this non-attendance was occasioned by an administrative and technical hitch involving the court registry in that he was not issued with a virtual link to access the court proceedings on the material date.

He further argues and submits that the court did not have sufficient or good reason for dismissal of the claimant application. This is also not compliant with the provisions of Article 159 (2) (a) and (d) that debar procedural technicalities in the administration of justice.

The Respondents in their replying affidavits submits and decry dishonesty in the part of the claimant in his application. It is her case that the claimant had served the Respondent with the hearing dates in her application for review of the judgment and therefore was always aware of the dates. He however did not attend the hearing and has not adduced any evidence in support of his grounds of non-attendance.

The Respondent again, dismisses the claimant's allegations of the issue of notice for 12th October, 2020 as lacking in merit or supported by any evidence. At this time, the application had been dismissed. She deems this exercise as vexatious, unmeritorious and an abuse of the process of court.

The Respondent opposes the application for lack of merit, being an abuse of court process and vexatious. She prays that it be dismissed with costs.

This is a delicate balancing exercise. It would be difficult to verify the efficacy of the Applicant's testimony in so far as the dismissal of the application for reinstatement is concerned. This court can only exercise its discretion and award the claimant applicant the benefits of doubt in the circumstances. This is more so bearing in mind that a reinstatement of the impugned application would not prejudice any of the parties.

I am therefore inclined to allow the application with orders that each party bears their costs of the same.

DATED AND DELIVERED AT NYERI THIS 9TH DAY OF MARCH, 2022.

D.K.NJAGI MARETE

JUDGE

APPEARANCES

1. MR. SAMSON KIOKO FOR THE CLAIMANT UNION/APPLICANT.

2. MR.KILONZO INSTRUCTED BY THE FEDERATION OF KENYA EMPLOYERS FOR THE RESPONDENT.