



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NUMBER 2149 OF 2016

BETWEEN

EASTER DOREEN WANGERWE MWANIKI.....CLAIMANT

VERSUS

STRATHMORE RESEARCH AND CONSULTANCY CENTRE LIMITED.....RESPONDENT

RULING

1. This Claim was filed in the year 2016.
2. On 19th June 2020, the matter came up for mention before the Hon. Justice Onesmus Makau.
3. There was no appearance by either Party, and the matter was stood over generally.
4. On 25th October 2021, the Court issued to the Parties a Notice to show cause why the Claim should not be dismissed for want of prosecution.
5. Notice was fixed for 18th November 2021.
6. None of the Parties appeared before the Court on 18th November 2021.
7. The Claim was dismissed for want of prosecution.
8. The Claimant filed an Application dated 30th November 2021, asking the Court to reinstate her Claim.
9. The Application is supported by the Affidavit of the Claimant's Advocate Linus Gichunge Thurairira, sworn on 30th November 2021.
10. The Advocate states that he had been unwell for 2 days, stretching to 23rd November 2021, when he states, the Claim was dismissed for non-attendance.
11. He exhibits a medical report, dated 22nd November 2021, showing that he was suffering gastroenteritis, and was placed on 2-day sick-off.
12. There is no response to the Application filed by the Respondent.
13. The Application was heard in the absence of the Respondent, on 2nd February 2022.

The Court Finds: -

14. The orders dismissing the Claim, issued on 18th November 2021.
15. The Notice to Show Cause, served upon the Parties, clearly states the hearing date to be 18th November 2021.

16. The Advocate for the Claimant is not shown to have been unwell on 18th November 2021.
17. There is no explanation in his Affidavit, relating to 18th November 2021.
18. The dates he states he was unwell, have no bearing on the proceedings of 18th November 2021.
19. The Claim was dismissed for want of prosecution, not for non-attendance.
20. That said, there is evidence on record to show that the Claimant had taken active steps, to prosecute the Claim, and the Notice to Show Cause issued by the Court, was not well-founded.
21. Exhibited by the Claimant in the Supporting Affidavit, are numerous correspondences between the Claimant's Advocate and the Court, exchanged in pursuit of a hearing date.
22. They range from the year 2017. They cover all the years the Claim has been pending in Court.
23. The most recent are dated 18th June 2021 and 6th October 2021.
24. The last was acknowledged by Catherine, Dates Section, E&LRC on the following day, 7th October 2021.
25. Catherine writes, *“...receipt of your e-mail is confirmed, and the contents noted. We shall proceed to retrieve the file, after which you will receive an e-mail scheduling a date for fixing and containing a link through which you will join the session. Kindly bear with us, as we endeavour to make the waiting period as short as possible.”*
26. How is it then, that 18 days later, the Court issued Notice to Show Cause why the Claim should not be dismissed for want of prosecution?
27. The Court appears to have rushed in scheduling the matter for Notice to Show Cause, and overlooked its communication to the Claimant, on 7th October 2021.
28. Justice hurried, is justice buried.
29. In dealing with case-backlog, it must not be lost on the Court that justice hurried, is justice buried.
30. There was no ground at all, to justify listing of the Claim for dismissal for want of prosecution. There was no ground for dismissing the Claim for want of prosecution.

IT IS ORDERED: -

- a. The Claim is reinstated, and the orders made on 18th November 2021 set aside.*
- b. The Dates Section, E&LRC, to immediately act in accordance with its e-mail to the Claimant, dated 7th October 2021.*
- 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 6TH DAY OF APRIL 2022.

JAMES RIKA

JUDGE