



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR

RELATIONS COURT AT NAIROBI

CAUSE NUMBER 1282 OF 2016

BETWEEN

MARY AYUGACLAIMANT

VERSUS

KENYA COACH INDUSTRIES LIMITED..... RESPONDENT

RULING

1. In her Application dated 14th September 2020, the Claimant seeks an order for reinstatement of her Claim, which was dismissed by the Court on 18th September 2019. The Claim was dismissed for want of prosecution.
2. Parties agreed to have the Application considered and determined on the strength of their Affidavits and Submissions on record.
3. The Application is based on the Affidavit of the Claimant's Advocate, sworn on 14th September 2016.
4. He explains that the Claim was filed on 30th June 2016. It was served upon the Respondent. The Respondent filed its Statement of Response on 18th May 2017, outside the prescribed timelines. Pre-trial directions issued on 23rd May 2017. It was directed that the hearing date is taken at the registry.
5. The Claimant invited the Respondent to fix a hearing date, through a letter dated 29th April 2019. The Respondent did not send a representative to the registry on 7th May 2019, and *ex parte* date was taken for hearing on 18th September 2019. The Respondent was duly notified.
6. However, the Claimant's Advocate failed to diarize the hearing date. He did not attend Court for hearing. The Respondent's Advocate attended. Claimant's Advocate states that the matter was dismissed for want of prosecution on 18th September 2019.
7. The Respondent opposes the Application submitting that it was the Claimant who took the hearing date, and notified the Respondent, but failed to attend Court on the date appointed for hearing.

The Court Finds: -

8. The Claimant appears to confuse dismissal of a Claim under Rule 16 of the E&LRC [Procedure] Rules, 2016, with dismissal under Rule 22 of these Rules.
9. Her Claim was not dismissed under Rules 16 for failure to take active steps to prosecute the Claim within one year; dismissal was for non-attendance and non-prosecution of the Claim under Rule 22, when on the date appointed for the hearing, the Claimant, herself having taken that date *ex parte*, failed to prosecute the Claim. The record indicates she had taken active steps previously, to prosecute the Claim. That is not in doubt, and is not the issue here.
10. Focus is on the reason given by the Claimant, for non-attendance. In this instance, the Claimant's Advocate told the Court that he did not diarize the hearing date.
11. This has become a common ground by Parties who fail to attend Court to prosecute or defend Claims.

12. It is not to be encouraged. It, in the view of the Court, amounts to professional negligence.

13. Rule 22 above compels the Court to dismiss Claims where the Claimant fails to appear for the hearing. The Rules states that the Court *may dismiss the suit, except for good reasons to be recorded*. The Court has an obligation to justify its decision not to dismiss a Claim for non-attendance.

14. The Court does not think that the omission by the Claimant's Advocate, is sufficient reason to revive the Claim. Judicial policy embodied in the Rules of this Court, is that there must be good reasons to justify non-attendance; the Court must be satisfied with the reasons forwarded by the defaulting Party; and the Court can only refuse to dismiss a Claim for non-attendance, for good reasons which must be recorded. The Claimant's Advocate has not satisfied the Court that there is sufficient reason to revive the Claim. She took the hearing date and served notice upon the Respondent, with the specific hearing date clearly shown on the hearing notice. It would be presumed that the Claimant would be made aware of the hearing date, by her Advocate, at the time the Respondent's Advocate was made aware.

15. Added to these factors, militating against the exercise of the Court's discretion in favour of the Claimant, is that she took a whole year, from the date her Claim was dismissed, to the date she filed her Application to reinstate the Claim. 1 year of inaction by a Claimant, is the period set under Rule 16 as observed above, to warrant dismissal of a Claim, for want of prosecution. The Rules presume 1 year of inactivity, to amount to inordinate delay. The Application would therefore fail on this score. There was inordinate delay in its presentation.

IT IS ORDERED: -

[a] The Application by the Claimant dated 14th September 2020 is declined.

[b] No order on the costs.

Dated and delivered at Nairobi this 4th day of February, 2021.

James Rika

Judge