



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU**

**CAUSE NO. 293 OF 2014**

**(Originally Nairobi Cause No. 1445 of 2010)**

**ONDIGI NICHOLAS AMWATA .....CLAIMANT**

**v**

**BOARD OF GOVERNORS, ST KIZITO NYANSIONGO HIGH SCHOOL.....  
RESPONDENT**

**RULING**

1. Ondigi Nicholas Amwata (the Claimant) sued the Board of Management, St Kizito Nyansiongo High School in 2010 alleging unfair termination of employment.
2. When the Cause came up for hearing on 6 November 2018, none of the parties were in attendance and the Court dismissed it for want of prosecution.
3. The dismissal prompted the Claimant to file a Motion on 23 May 2019 seeking orders
  1. ...
  2. THAT the Honourable Court be pleased to set aside the orders issued on 06.11.2018 dismissing this suit for want of prosecution.
  3. THAT the Honourable Court be pleased to reinstate this suit for full hearing and determination.
  4. THAT costs of this suit be provided for.
4. The primary ground advanced in support of the application was that the Claimant had not been notified of the hearing scheduled for 6 November 2018.
5. The Respondent's Vice-Chairman swore a replying affidavit in opposition to the Motion and it was filed in Court on 26 February 2020. In the affidavit, it was deposed that a Notice had been served upon the Claimant.
6. Pursuant to Court directions, the Respondent filed submissions on 26 February 2020 while the Claimant filed his submissions on 19 February 2021.

7. The Court has considered the Motion, affidavits and submissions and come to the view that the Motion should be dismissed for the following reasons.

8. One, when the Cause first came for hearing on 10 October 2016 at the instigation of the Claimant, he did not appear for the hearing.

9. Two, on 14 December 2017, the Claimant applied to have the Cause mentioned for directions and the Court fixed the mention for 19 February 2018. The Claimant did not attend the Court for the giving of directions.

10. Three, on 23 May 2019, the Court directed the Claimant to serve the instant Motion. When the Motion came up for hearing on 18 September 2019, it turned out that the Claimant had not served the application.

11. Four, the next time the Motion came up on 22 January 2020, the Respondent informed the Court that the Claimant was yet to serve it with the application. The application was only served in Court that morning.

12. The Court thereafter directed the Claimant to file and serve submissions within 14 days. The submissions were filed on 19 February 2021, more than 1 year after the Court directed the filing and exchange of submissions (the Respondent had filed its submissions on 26 February 2020).

13. Lastly, the Cause was dismissed on 6 November 2018 but the Claimant only moved the Court seeking an order of reinstatement on 23 May 2019, some 6 or so months later. No satisfactory explanation for the delay was offered.

14. The Claimant moved the Court in 2010. The delay obviously would impact the possibility of doing justice to both parties considering that memories fade and witnesses move on from employment especially within the public sector.

15. The sum total of the above is a demonstration of a party disinterested in prosecuting his Cause. The conduct exhibited by the Claimant has at best been casual and reckless and militates against a favourable exercise of the Court's discretion.

### **Conclusion and Orders**

16. The Court declines the invitation by the Claimant and orders that the Motion be dismissed with costs.

**Delivered through Microsoft teams, dated and signed in Kisumu on this 24<sup>th</sup> day of March 2021.**

**Radido Stephen, MCI Arb**

**Judge**

**Appearances**

For Claimant Osoro Omwoyo & Co. Advocates

For Respondent B. Rogito Isaboke Advocates

Court Assistant Chrispo Aura