



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

APPEAL NO. 44 OF 2019

(Originally Kakamega High Court Civil Appeal No. 63 of 2015)

BENARD MUSE SHAKA.....APPELLANT

VERSUS

WEST KENYA SUGAR CO LIMITED....RESPONDENT

(Being an Appeal arising from the judgment and decree of C. Kendagor in the Chief Magistrates Court in Kakamega Civil Case No. 454 of 2012 delivered on the 31/07/2015)

JUDGMENT

1. Benard Muse Shaka (the Appellant) sued West Kenya Sugar Co. Ltd (the Respondent) before the Magistrates Court in Kakamega, alleging breach of duty of care/negligence in the workplace.
2. In a judgment delivered on 31 July 2015, the trial Court dismissed the suit and being aggrieved, the Appellant filed a Memorandum of Appeal before the High Court in Kakamega contending that:
 1. The Learned Magistrate erred in law and fact in dismissing the Appellant's suit against the weight of evidence on record.
 2. The Learned Magistrate erred in fact and in law by finding in favour of the Respondent when evidence on record showed that the Respondent was entirely to blame for the accident.
 3. The Learned Magistrate failed to appreciate the submissions of the learned counsel for the Appellant.
3. The Appellant sought orders quashing the judgment and making new findings on liability and quantum.
4. On 20 March 2017, the High Court issued a Notice to the Appellant under Order 42 Rule 15(1) & (2) of the Civil Procedure Rules indicating that the Appeal had been admitted. The Appellant was directed to file the Record of Appeal within 30 days, but the directive was not complied with.
5. Since no action had been taken, the High Court issued a Notice for Dismissal of the Appeal under Order 42 Rule 35(2) of the Civil Procedure Rules on 21 May 2019. A similar Notice was issued on 20 June 2019, but the Court did not proceed with the Notices.
6. On 11 November 2019, the High Court, citing lack of jurisdiction, transferred the Appeal to this Court.
7. When the Appeal came up for directions on 2 November 2020, the Appellant was not present, and the Court directed that a fresh Notice for Dismissal do issue with a return date of 18 November 2020.
8. On 18 November 2020, the Court directed the Appellant to file and serve an affidavit in response to the Notice for Dismissal.
9. When the parties next appeared in Court on 2 December 2020, the Court accepted the Appellant's explanation.
10. This Court further gave directions requiring the parties to file and exchange submissions.
11. The Appellant was to file and serve submissions on or before 30 December 2020. The same was not on record by the agreed timeline.

12. The conduct of the Appellant in prosecuting this Appeal has been at best lackadaisical. He had to be prompted by the High Court to move by two Notices for Dismissal. The record does not indicate why the High Court did not make any determination on the Notices.

13. This Court also had to prompt the Appellant to move only after a Notice for Dismissal was issued.

14. Despite being given an opportunity to prosecute the Appeal by filing and serving submissions within clearly agreed timelines, the Appellant did not comply.

15. The Appellant did not have the courtesy of formally informing the Court if he had any challenges in complying with the directions on the filing of submissions, if at all, through a letter to the Deputy Registrar.

16. The Court has no other option but to dismiss the Appeal on two grounds, failure to prosecute the Appeal and unexplained failure to comply with peremptory Court orders.

17. Costs to the Respondent.

DELIVERED THROUGH MICROSOFT TEAMS, DATED AND SIGNED IN KISUMU ON THIS 17TH DAY OF MARCH 2021.

RADIDO STEPHEN, MCIARB

JUDGE

Appearances

For Appellant Abok Odhiambo & Co. Advocates

For Respondent Okong'o Wandago & Co. Advocates

Court Assistant Chrispo Aura