

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 2024 OF 2016

(Before Hon. Lady Justice Anna Ngibuini Mwaure)

SYLVESTER HARAMBEE INDECHE...CLAIMANT

VERSUS

DALY & INAMDAR ADVOCATES....RESPONDENT

RULING

1. The case was scheduled for notice to show cause why the suit should not be dismissed for want of prosecution.
2. The claimant filed an affidavit to appeal to the court not to dismiss the suit. The same was dated 19th July, 2021. Indeed as per the affidavit deponed by the claimant he has demonstrated he attempted to set down the matter for hearing and was actually fixed for 18th March, 2020 but failed to take off because of the Covid – 19 pandemic.
3. He avers he sent an invitation again on 3rd September, 2020 but the registry informed him they were trying to retrieve the file.
4. It is clear the claimant has not been asleep and has been trying to set the matter for hearing but there has been interfering circumstances that were not of his own making.
5. The court has considered the submission by the respondent's advocate as well. Having considered the submissions by both parties the court will try to give the claimant the opportunity to prosecute its case but give a close hearing date in order to meet the ends of justice taking into consideration that this is a 2016 case.
6. Case will be mentioned before the Deputy Registrar on 11.11.2021 to take a convenient earliest hearing date before any Employment and Labour Relations Court judge.

DELIVERED, DATED AND SIGNED IN NAIROBI THIS 21ST DAY OF OCTOBER, 2021

ANNA NGIBUINI MWAURE

JUDGE

ORDER

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with **Order 21 Rule 1 of the Civil Procedure Rules**, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court has been guided by Article 159(2) (d) of the Constitution which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of **Section 1B of the Procedure Act (Chapter 21 of the Laws of Kenya)** which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

A signed copy will be availed to each party upon payment of court fees.

ANNA NGIBUINI MWAURE

JUDGE