



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA

AT NAIROBI

CAUSE NO.2126 OF 2015

BARBARA KARWITHA KIUGU.....CLAIMANT

VERSUS

PERNORD RICARD KENYA LIMITED.....RESPONDENT

RULING

The claimant filed application dated 6th November, 2019 seeking for orders that the orders made on 7th February, 2019 dismissing the suit for want of prosecution are set aside and the suit be reinstated for hearing on merit.

The application is supported by the affidavit of Wangari Kamau Advocate for the claimant and on the grounds that the non-attendance in court by the advocates for the claimant arose due to non-service of the Notice to Show Cause by court and after several attempts to fix the matter for hearing. The advocates only found the matter had been dismissed for want of prosecution on 16th July, 2019 when the Deputy Registrar wrote indicating the suit had been dismissed.

In her affidavit, Wangari Kamau Advocate avers that the suit was last in court on 21st April, 2016 when both parties requested for a hearing date but the scheduled date fell on the service week.

On 10th October, 2016 the claimant invited the respondent for allocation of a hearing date but were unable to attend and on 22nd May, 2019 wrote to the court seeking for a date only to learn that the matter had been dismissed for non-attendance.

The claimant has a good case and if allowed to attend will prosecute here case.

The respondent filed Grounds of Opposition that the application before court does not disclose any substantial grounds and should be dismissed. No reasons are given as to why action was not taken since the matter was confirmed ready for hearing between 10th October, 2016 to 22nd May, 2019 when a letter to the registry was written and a response revealed that the matter had been dismissed for non-attendance. After such date, the instant application was only filed in November, 2016 which delay is not explained.

The suit herein was filed on 3rd December, 2015.

On 24th February, 2016 parties attended at the registry and were allocated 21st April, 2016 for mention.

There was no attendance.

Through Notice dated 17th January, 2019 sent to both parties, court directed attendance on 7th February, 2019 to show cause why the suit should not be dismissed for want of prosecution under the provisions of Rule 16 of the Employment and Labour Relations Court (Procedure) Rules, 2016. Only the respondent was in attendance.

The claimant and the advocate do not contest the address the notice posted at;

Wandabwa Advocates

ACK Gardens House Ground Floor Wing C,

1st Ngong Avenue

P.O. Box 1221-00100

Nairobi

It is not stated that this Is a different address from the one provided in the pleadings and one marked for service herein.

Upon filing suit, the claimant had the responsibility, through counsel or self to move the court and have the matter heard and determined.

The lapse in attendance from the year 2016 to the year 2019 is not explained. Pursuant to Rule 16 of the Employment and Labour Relations Court (Procedure) Rules, 2016 the court upon notice to a party whose matter is not fixed for hearing within a year is allowed to dismiss the same.

Further, upon counsel finding out on 16th July, 2019 that the suit herein had been dismissed for want of prosecution vide letter from the Deputy Registrar, the instant application was not filed until 6th November, 2019. The delay is apparent.

Even in these proceedings, the claimant has not addressed the lapse in non-attendance. The application is supported by counsel and without noting the interest of the right-holder, the claimant herein.

Accordingly, the court finds no reasonable cause to justify the delay in prosecuting this matter and no substantive grounds have been advanced for the reinstatement of the suit dismissed for non-attendance on 7th February, 2019.

Accordingly, application dated 6th November, 2019 is found without merit and is hereby dismissed. Costs to the respondent.

DELIVERED IN COURT AT NAIROBI THIS 7TH DAY OF OCTOBER, 2021.

M. MBAR?

JUDGE