



REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS

COURT OF KENYA AT NAIROBI

CAUSE NO. 1006 OF 2016

(FORMERLY GARISSA ELRC CAUSE NO. 1 OF 2016)

MOHAMED JAMAA ALI.....CLAIMANT/APPLICANT

VERSUS

THE CHAIRMAN, KNUT GARISSA BRANCH & ANOTHER.....RESPONDENTS

RULING

1. The Claimant/Applicant has brought a notice of motion expressed to be brought under the provisions of Order 17, Rule 2(6); Order 51, Rule 1 of the Civil Procedure Rules, Section 3 and 3A of the Civil Procedure Act Laws of Kenya and all other enabling provisions of the Law, seeking for orders *inter alia*-

- 1) THAT this Honourable Court be pleased to set aside the dismissal order made on the 20th July, 2021 and reinstate the suit.
- 2) THAT this Honourable Court set the suit for hearing on priority basis.
- 3) THAT the costs of this application be provided.

The application is based on the grounds that

- a) Neither the firm on record for the Claimant/ Applicant nor the Applicant was served with the Notice to show cause why the suit should not be dismissed for want of prosecution.
- b) The Claimant's/ Applicant's representatives inquired on several occasions and also visited the registry severally with a view of fixing a hearing date but was informed that matters for the year 2015 and below were the once being allocated dates then.
- c) The Claimant/Applicant is keen to prosecute his case and thus seeks same to be reinstated.
- d) There will be a miscarriage of justice and prejudice occasioned on the part of the Claimant/ Applicant if this application is not allowed.

The motion was further supported by the supporting affidavit of Ephraim Ndege Advocate annexed to the motion.

2. The application seeks the reinstatement of the suit which was dismissed for want of prosecution in July 2021. The Claimant/Applicant asserts that he was not served with the notice to show cause prior to the termination of the suit. Despite the protests by the Claimant/Applicant's advocates that the notice to show cause was not served, there is proof that email dated 22nd May 2021 was sent attaching the notice to shoe cause dated 10th May 2021 upon the parties. The notice indicated that the Notice to Show cause was coming up on 20th July 2021 for hearing.

3. The Court record indicates that there only appearance for the Advocate for the 1st Respondent Miss Tusiime while the Claimant's advocate and the advocates for the 2nd Respondent did not appear. The matter was dismissed as no cause was shown as to why the matter ought not be dismissed and the costs awarded to the 1st Respondent who prayed that the suit be dismissed with costs to it.

4. In a matter for setting aside, there must be basis for the setting aside. In the case before me no basis exists for the recanting of the Court

order dismissing the suit as the Claimant/Applicant has not been able to surmount the threshold to permit the Court to set aside. No plausible reason has been advanced why the suit ought to be reinstated and granted that the course of justice is served if the suit remains dismissed the motion is denied albeit with no order as to costs as there was no opposition filed by the 1st or 2nd Respondents herein. Application dismissed with no order as to costs.

It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 18TH DAY OF NOVEMBER 2021

NZIOKI WA MAKAU

JUDGE