



REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS COURT OF KENYA

AT NAIROBI

CAUSE NO. E643 OF 2020

FIDELIS OMWAMBA ONSONGO

MOSES NYANGENA

NZILANI MUSYOKI

DUKE MASIRE NYAKINA

JEREMIAH RAWINJA MIIKOBIA & 1644 OTHERS.....CLAIMANTS

VERSUS

TAILORS & TEXTILE WORKERS UNION.....1ST RESPONDENT

GLOBAL APPARELS (EPZ) LIMITED.....2ND RESPONDENT

RULING

1. The Notice of Motion application before me is expressed to be brought under Order 12 Rule 7 and Order 51 Rule 1 of the Civil Procedure Rules, Sections 1A, 13 and 3A of the Civil Procedure Act Cap 21 Laws of Kenya, Section 12(3)(i) of the Employment and Labour Relations Court Act together with all the other enabling provisions of the Law. It seeks in the main for orders THAT:

- i. This application be certified urgent and service thereof be dispensed with in the first instance.
- ii. Pending the hearing and determination of this application, the 2nd Respondent be restrained from effecting any deduction on the Claimants' salaries on account of Union dues or agency fees.
- iii. The Honourable Court be pleased to set aside the orders issued on 22nd November 2021 by the Honourable Justice Nzioki wa Makau dismissing the Claimants' application dated 3rd November 2021.
- iv. The Claimants' application dated 3rd November be reinstated for hearing and determination on its merit.
- v. The costs of this application be in the cause.

2. The Application is premised on the grounds that failure by the Claimants' counsel to attend court on 22nd November 2021 was not intentional and/or wilful but due to non-admission into the court session. The Claimants assert that they are ready to prosecute their application dated 3rd November 2021 expeditiously and that it is therefore in the interest of justice that the said application be reinstated for determination on merits.

3. The application was opposed by the 1st Respondent and its National General Secretary Rev. Joel Kandie Chebii deponed that the instant matter was coming up for hearing of the Claimant/Applicant's Application dated 3rd November, 2021. He states that as per the Honourable Court's Cause list, all parties are required to join the Court virtually at 9:00am for time allocations for time allocations and not at 9:10am as indicated by the Applicants. He asserts that on 22nd November 2021 when parties were logged in the virtual court session, the Honourable Court indicated that mentions and Applications on the cause list would be dealt with at 2:00pm when the Court would be sitting. This was in line with the cause list which indicated that the Honourable Court would be giving time allocations. He deponed that the 1st Respondent's

advocates on record were logged into the virtual court session at the allocated time of 2:00pm to prosecute the Application dated 3rd November 2021 where there was non-attendance by the Claimant/Applicant who logged into the session late at 2:30pm. He deponed that due to non-attendance by the Claimant/Applicant at the allocated time of 2:00pm, the application dated 3rd November 2021 was dismissed for want of attendance and want of prosecution. He deponed that the Claimant/Applicant was not vigilant in attending court or following up with the court clerk whose number is displayed on the cause list in the morning of 22nd November 2021 when they were unable to access the Honourable Court virtually and instead opted to contact the court registry the next day.

4. Equity aids the vigilant and not the indolent. From the assertions in ground 1 of the Notice of Motion dated 24th November 2021 is that the inability by the Claimant/Applicant to attend court was due to lateness. This fact was admitted in paragraphs 2 and 4 of the Supporting Affidavit sworn by Mr. Victor Muriuki. It is amply clear that failure to attend Court at the designated time is not one of the factors a party can use for a reinstatement of suit as an excusable mistake does not include the refusal to attend Court at the times directed by Court. I hold and find that the Application by the Claimants is completely devoid of merit, misconceived and a waste of judicial time as parties know when they are required to attend Court especially in this Covid era where parties even have the luxury of appearing from remote locations, where travel to Court is not a factor or cause for lateness. The 1st Respondent is correct in its surmise that the Claimants were not diligent as they sought to know what had transpired in their case the next day instead of the day the case was in Court. Application is dismissed with costs to the 1st Respondent.

It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 14TH DAY OF DECEMBER 2021

Nzioki wa Makau

JUDGE