



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAKURU

ELRC CAUSE NUMBER 304 OF 2014

JOSEPH MUREGI CHEGE.....CLAIMANT

-VERSUS-

COOL RIVERS HOTEL LTD.....RESPONDENT

(BEFORE HON. JUSTICE DAVID NDERITU)

RULING

1. The Claimant herein commenced this cause vide a memorandum of claim dated 7th July, 2014 and filed in court on 10th July, 2014.
2. Upon service of the process, the Respondent entered appearance dated 21st July, 2014 filed in court on the same date, and filed a memorandum of defence dated 7th May, 2015 on 8th May, 2015.
3. The Claimant responded to the defence vide a response dated 3rd August, 2015 filed in court on 18th September, 2015.
4. Since the filing of this cause, the same has come before three (3) different Judges of this court at different times, and this court is now the fourth to handle the matter. Unfortunately, this matter has never proceeded to hearing.
5. The cause had been fixed for hearing on 9th April, 2019 and 26th March, 2020 but for reasons that this court is not able to discern from the record, the matter did not proceed on both dates. The matter was last in court on 18th May, 2020 when the court ordered that a hearing date be taken on priority basis. Since then no other action was taken.
6. On 24th September, 2021, the Deputy Registrar issued a Notice to show cause (NTSC) why the cause should not be dismissed for want of prosecution and the same was fixed for hearing on 12th October, 2021.
7. The Notice to show cause was served upon the parties via the email addresses provided and on 12th October, 2021 Karanja Mbugua, Advocate appeared for the Respondent while there was no appearance or representation on the part of the Claimant.
8. The court considered the Notice to show cause on 12th October, 2021 and proceeded to dismiss the cause for want of prosecution with no orders as to costs. Karanja Mbugua, Advocate for Respondent supported the dismissal of the cause.
9. Vide a Notice of Motion dated 26th October, 2021 the Claimant/Applicant is seeking to reinstate the cause.
10. The said motion is based on the grounds set out on the face of the same and is supported by an affidavit sworn by the Claimant/Applicant on 20th November, 2021. The Claimant/Applicant has also filed another affidavit sworn by himself on 30th November, 2021 in response to the notice to show cause.
11. In both the affidavits mentioned above, the Claimant/Applicant alleges that he was not served with the Notice to show cause that was coming up for hearing on 12th October, 2021 as the same was sent to an email address that he no longer uses.
12. The Claimant/Applicant further attributes the delay in prosecuting his matter to the confusion caused by the Covid-19 pandemic and inaction on the part of the court registry.

13. The Claimant/Applicant argues that he had an Advocate on record as at the time the Notice to show cause was issued and hence the said Advocate should have been served with the same instead of the court registry emailing the same to him through an email address that he no longer used.

14. Further the Claimant/Applicant argues that his Advocate on record attempted to log-in on 12th October, 2021 when the Notice to show cause was coming up for hearing but he was unable. This was after Advocate had sighted the cause in the cause-list though not served.

15. This court has carefully gone through the Notice of Motion, the supporting affidavit and the annexures thereto and also the affidavit in response to the Notice to show cause. However, the court opines that the reasons given for the delay in prosecuting the cause are neither convincing nor adequate. The Claimant/Applicant has not demonstrated any serious efforts in fixing the matter for hearing in 2020 and 2021.

16. However, the fact that the Claimant/Applicant or his Advocate who came on record on 23rd July, 2021 was not served with the Notice to show cause that gave rise to the dismissal of the cause gives this court a reason to give the Claimant/Applicant, albeit reluctantly, a last chance to prosecute this matter.

17. This is a cause that was filed in 2014 and any further delay in prosecuting and concluding this matter shall place the reputation of this court at risk.

18. The Notice of Motion dated 26th October, 2021 is allowed with costs in the cause.

19. Further this court directs that this matter shall now be heard on priority basis and no application for adjournment will be allowed.

DATED AND DELIVERED VIRTUALLY AT NAKURU THIS 7TH DAY OF DECEMBER, 2021.

.....

DAVID NDERITU

JUDGE