



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO. 1643 OF 2012

PATRICK KAMAU KARIRUCLAIMANT

v

GEOFARTHOM DRILLING CO. LTD.....1st RESPONDENT

EGOSKARM (EA) LTD.....2nd RESPONDENT

RULING

1. Judgment was delivered in this Cause on 13 April 2017 wherein the Court awarded the Claimant Kshs 455,000/- for breach of contract.
2. The Claimant then moved to execute the decree, but on 21 March 2018, the Court set aside the execution of the judgment after an objection was raised to the attachment.
3. On 5 February 2019, the Claimant applied to the Court to order the 1st Respondent to produce for inspection its books of accounts, and its directors for an oral examination.
4. When the application came up for hearing on 25 February 2019 it was adjourned because the Claimant had not served it upon the Respondents.
5. The Claimant then caused the application to be fixed for hearing on 2 July 2019.
6. When the application was called for hearing on the scheduled date, the Court dismissed it primarily on two grounds, the absence of the Claimant and lack of an affidavit of service attesting to service upon the Respondents.
7. On 29 August 2019, the Claimant moved the Court seeking the reinstatement of the dismissed application and the grounds relied on were that its advocate was before the High Court and that there was no delay in filing the application.
8. When this application came for hearing on 17 October 2019, the Claimant sought an adjournment and the reason was that the application had not been served.
9. The Court declined to grant the adjournment because there was no explanation of why the application had not been served upon the Respondents.
10. The Claimant then filed the instant application on 5 November 2019 seeking the reinstatement of the application of 29 August 2019.
11. The grounds advanced in support of the application were that the application was not traced in the court file; the affidavit of service had been misplaced but had been traced and that the interest of justice tilted in favour of allowing the application as the Respondents would not be prejudiced.
12. A director of the Respondents filed a replying affidavit in opposition to the application on 22 November 2019 asserting that the Claimant had been indolent; that the Claimant had failed to serve hearing notices previously and that a hearing notice for 17 October 2019 had only been served a day earlier.
13. The Court heard brief oral submissions on 27 November 2019.
14. The Court agrees with the Respondents that the Claimant has been indolent all along. He did not file an affidavit of service in respect of the hearing scheduled for 2 July 2019.

15. Further, the hearing for the application of 29 August 2019 was taken on 29 August 2019. The Claimant only served the hearing notice on 15 October 2019, barely two days to the date of hearing the application.

16. The Court will reluctantly allow the application dated 4 November 2019 and reinstate the application dated 4 February 2019 on condition that the Claimant pays the Respondents thrown away costs of Kshs 10,000/- within 7 days from today, in default the application stands dismissed without any further court orders.

Delivered, dated and signed in Nairobi on this 24th day of January 2020.

Radido Stephen

Judge

Appearances

For Claimant Ms. Wawira instructed by Maina Njuguna & Associates Advocates

For Respondent Mr. Kiptoo instructed by Paul Mugwe & Co. Advocates

Court Assistant Judy Maina