

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA

AT NAKURU

CAUSE NO.13 OF 2017

HANNAH NYAMBURA KIMANICLAIMANT

VERSUS

BLISS FLORA LIMITED.....RESPONDENT

RULING

The claimant filed application dated 18th June, 2019 seeking the court to set aside the orders issued on 6th March, 2019 and reinstate the suit which was dismissed for non-attendance.

The application is supported by the affidavit of Caleb Cheruiyot Koech and on the grounds that the suit was dismissed for non-attendance as the claimant's advocate was not aware that the matter had been fixed for hearing on the 6th March, 2019 and the advocate attending on 1st October, 2019 inadvertently informed him of a different date. The claimant was then mistakenly advised that hearing was on 6th May, 2019 and thus did not attend and the same was dismissed.

Mr Koech avers in his affidavit that on 1st October, 2018 he instructed Sheila Tarus to hold his brief and take hearing directions who informed him that hearing was 6th may, 2019 and not 6th March, 2019 and thus failed to diarise the matter which was called and dismissed.

The respondent filed Grounds of Opposition and a Replying Affidavit of Lucy Wangui Kariuki and that the application by the respondent is in abuse of court process and should be dismissed. Ms Kariuki also avers that as the managing director of the respondent on 1st October, 2018 she instructed advocate to attend and secured a hearing date by consent for 6th March, 2019 but on the due date there was no attendance by the claimant or the advocate and the matter was dismissed for good cause. No good reason is given to justify the orders sought.

Both parties filed written submissions.

In taking account the application and the affidavits thereof and in reply together with the written submissions, where indeed the claimant advocate attending on 1st October, 2018 mistakenly shared a wrong date and in error or inadvertence that hearing was on 6th May, 2019, a Monday there is no explanation as to whether the claimant attended court and noted the error and thus moved expeditiously to arrest any prejudice.

The application herein is filed on 20th June, 2019.

Noting the seriousness of the matter and dismissal of the suit for non-attendance, even where the error in diarising the dates is to be taken into account, the delay in address the lapse as of 6th May, 2019 is not addressed.

Once a suit is dismissed for non-attendance and as correctly submitted by the claimant in the case of **Belinda Murai and Others versus Amos Wainaina {1978} KLR** noting the mistake, nothing stopped the claimant from moving the court instantly. Also in the case of **Transami (K) Limited versus Sokhi International (K) Limited [2007] eKLR**, the court reading of this case as cited by the claimant, the foundation and matter at hand before the court is fundamentally different from the current case. Therein the plaintiff had taken time to give a detailed chronology of events leading to the non-attendance of the advocate in court. The plaintiff therein was keen to precede with his the case in the absence of the advocate.

In this regard, the court finds no good cause to allow the application.

Accordingly, application dated 18th June, 2019 is hereby dismissed. Costs to the respondent.

Delivered at Nakuru this 23rd day of January, 2020.

M. MBARU

JUDGE

In the presence of: