



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU**

**MISC. CAUSE NO. 26 OF 2014**

***(Before Hon. Justice Mathews N. Nduma)***

**LEWIS ONYONI MOTIERI..... CLAIMANT**

**VERSUS**

**FARMERS UNITED/ONE ACRE FUND.....RESPONDENT**

**RULING**

1. The Respondent/Applicant filed application dated 24<sup>th</sup> November 2014 seeking to have the file in respect of Kisumu Industrial Cause No. 84 of 2014 be re-constructed. The application was not prosecuted.
2. On 14<sup>th</sup> June 2019, the Respondent/Applicant filed yet another application to have the file reconstructed and the suit be dismissed for want of prosecution.
3. M/S N.E. Mogusu and Associates filed grounds of opposition dated 26<sup>th</sup> June 2019 opposing the application for dismissal but was not opposed to reconstruction of the file on the basis that the file was missing. The claimant argues that he has been unable to prosecute the suit since the court file is missing. The claimant states that the respondent has been unable to prosecute the counter claim for the same reason that the file is missing.
4. The court notes with concern that the claimant appear to have made no effort to trace the file or have another file re-constructed to allow expedient prosecution of this case. There is no correspondence written by either the claimant or the respondent to the Deputy Registrar of the court seeking to have the file traced. In fact the allegation that the file went missing appear to be completely unsupported by any correspondence.
5. The above is evidence of indolence on the part of both parties in this matter. No wonder, the application filed by the respondent on 4<sup>th</sup> December 2014, has not been prosecuted to date.
6. Having said that there is need to have the Deputy Registrar reconstruct **Kisumu Industrial Cause No. 84 of 2014, Lewis Onyoni Motieri vs Farmers United/One Acre Fund** to allow hearing and determination of the suit. There being no file, the prayer for dismissal on grounds of non-prosecution is untenable.
7. Accordingly, the court makes the following orders:
  - (i) The Deputy Registrar, Employment and Labour Relations Court reconstruct **Kisumu Industrial Cause No. 84 of 2014: Lewis Onyoni Motieri vs Farmers United/One Acre Fund** within the next 30 days if indeed the file is missing at the registry.
  - (ii) The claimant and the respondent to provide to the court vide the registry all the pleadings and correspondence in their possession within 10 days of this judgment to enable the Deputy Registrar reconstruct the file.
  - (iii) The claimant and the respondent to cause the matter to be listed for hearing and determination within 14 days of reconstruction of the file by the Registrar failing which the main claim and the counter claim will stand dismissed for non-prosecution.
8. Costs in the cause.

**Ruling Dated, Signed and delivered this 20<sup>th</sup> day of February, 2020**

**Mathews N. Nduma**

**Judge**

**Appearances**

Annet Mumalasi and Company Advocates for the Respondent/Applicant.

N.E. Mogusu and Company Associates for the Claimant/Respondent

Chrispo – Court Clerk