



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 2116 OF 2015

JUDY WAMAITHA MWANGICLAIMANT

V

PAUL MOPEL1ST RESPONDENT

CALIFORNIA BAR & BUTCHERY2ND RESPONDENT

RULING

1. When the Cause came up for hearing on 31 July 2018, the Claimant, her advocate on record and the Respondent were not in Court, and the Court dismissed the Cause (the Deputy Registrar had fixed the hearing date in the presence of advocates for both parties).
2. On 23 January 2019, the Claimant filed an application seeking an order reviewing and setting aside the order dismissing the Cause.
3. The Claimant caused the application to be scheduled for hearing on 18 February 2019.
4. When the application was called out for hearing at 9.10 am, the Claimant and/or her advocate were not in Court and the Court dismissed the application.
5. 7 months later, on 19 September 2019, the Claimant filed another application seeking orders
 1. That this Honourable Court be pleased to review and set aside the orders dismissing the application dated 21st January 2019 for non-attendance.
 2. That this Honourable Court be pleased to allow the Claimant herein to prosecute her claim.
 3. That costs of this application be in the cause.
6. The reasons advanced in support of the application were that the failure to attend Court on 18 February 2019 was not intentional as the advocate on record was held up in High Court Succession Cause No. 2431 of 2010, and that he had sent a representative to seek an adjournment but the application was dismissed before the advocate could address the Court.
7. The advocate on record for the Respondents filed a replying affidavit in opposition to the application wherein it was asserted that the Claimant had not presented any justifiable reason to warrant the orders sought and that the Claimant had shown disinterest in her claim. The delay in filing the application was cited.
8. The Claimant filed submissions in support of the application on 25 November 2019 while the Respondents filed their submissions on 27 November 2019.
9. The Court has given keen attention to the record, the application, affidavits in support and opposition thereto and the submissions.
10. It took the Claimant about 7 months to file the application under consideration. There has been no explanation at all as to why it had to take that long if indeed the Claimant had an interest in her suit.
11. The delay, in the view of the Court, was inordinate, and because the Claimant did not provide any explanation, the Court is minded not to

exercise its discretion in favour of the Claimant.

12. On the merits of the application, the Claimant's advocate on record contended that he was before another Court, but apart from making reference to his diary, did not disclose the particular Court the said Cause was in. The name of the judicial officer was not stated nor was a copy of the cause-list for the day exhibited.

13. Further, the Claimant has asserted that an advocate was requested to address the Court without disclosing the identity of the said advocate. There is even no affidavit from the Clerk/representative who was sent to Court to seek an advocate to hold brief.

14. From the foregoing, the Court finds no merit in the application dated 6 September 2019, and orders it dismissed with costs to the Respondents.

Delivered, dated and signed in Nairobi on this 7th day of February 2020.

Radido Stephen

Judge

Appearances

For Claimant Ngugi Mwaniki & Co. Advocates

For Respondents Nyokabi Waiganjo, Omung'ala & Associates Advocates

Court Assistant Judy Maina