



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO. 1147 OF 2015

(Before Hon. Lady Justice Hellen S. Wasilwa on 11th March, 2020)

RASHID MOHAMED YUNIS.....CLAIMANT

VERSUS

THE ATTORNEY GENERAL.....1ST RESPONDENT

PRINCIPAL SECRETARY,

MINISTRY OF INTERIOR & COORDINATION

OF GOVERNMENT.....2ND RESPONDENT

MINISTRY OF INTERIOR & COORDINATION

OF GOVERNMENT.....3RD RESPONDENT

RULING

1. The Application before Court is the Claimant/Applicant's Notice of Motion filed on 15/7/2019 seeking the following orders:

- 1. That the Claimant's application dated 1st July, 2015 be reinstated and determined on merit.***
- 2. That the costs of this Application be provided for.***

2. The application is based on grounds that:

- 1. The Respondent's application came up for hearing on 21.1.2019 and the suit was dismissed for want of prosecution.***
- 2. The absence of counsel for the Claimant and his client on the hearing date of the application was non-deliberate and the alleged prolonged, inordinate and inexcusable delay in prosecuting this matter is not deliberate.***
- 3. The Claimant will suffer injustice if this application is not heard and it would be in the interest of justice to reinstate the matter.***

3. The application is supported by the affidavit of Rashid Mohamed Yunis, the Applicant, sworn on 5.6.2019. He depones that a notice was issued seeking to have the matter dismissed for want of prosecution but he was not aware of the hearing date.

4. He avers that he learned of the dismissal when his previous advocate on record sought a hearing date. He contends that it is in the best interest of justice that his claim be reinstated and heard on merit.

5. The Respondents opposed the application by filing Grounds of Opposition on 20.8.2019. They confirm that the suit was dismissed for want of prosecution and that the Applicant cannot invoke ignorance or mistake to justify their indolence.

6. They aver that the application goes against the rule set in **Njue Ngai v Ephantus Njiru & Anor CA 29 of 2015** where the Court held:-

“Another issue may arise as to whether a dismissal of a suit for non-attendance of the Plaintiff or for want of prosecution, amounts to a judgement in that suit. The predecessor of this Court answered that issue in the affirmative when considering the dismissal of a suit for failure by the Plaintiff to attend Court in the case of Peter Ngome vs Plantex Company Limited (1983) eKLR”.

7. The application was heard orally and submissions made by the parties’ counsel.

Submissions by the parties

8. Counsel Dome for the applicant submitted that they were invited after the suit was dismissed for want of prosecution. Counsel argued that the suit was dismissed due to mistake of the advocates and this mistake should be visited upon the Applicant.

9. Counsel Ms. Chesyna for the Respondents submitted that the matter was filed in 2014 and the Applicant did not attend court on 7.3.2017 when the matter was mentioned. She argued that upon filing their application to have the suit dismissed, they never received any response from the Applicant.

10. She argued that the Applicant’s application does not give any reason for reinstatement of the suit and urged the Court to uphold the dismissal and dismiss the application.

11. In a brief rejoinder, Counsel Dome reiterated his position that the mistake was occasioned by the Applicant’s Counsel.

12. I have examined the averments of both Parties. I note that this claim was dismissed for want of prosecution on 21/1/2019. On this day, Counsel for Claimant failed to attend Court hence the dismissal.

13. Indeed, it was not the Claimant’s mistake that the claim was dismissed but the mistake of his counsel and the Claimant should not be punished for mistakes of his counsel.

14. I therefore exercise my discretion and allow reinstatement of this suit to be heard on merit.

15. Costs in the cause.

Dated and delivered in open Court this **11th day of March, 2020.**

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Michuki for Chezyna for Respondent – Present

Claimant – Absent