



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT KISUMU**

**CAUSE NO. 177 OF 2018**

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

**LYDIA MORAA OMWERI.....CLAIMANT/RESPONDENT**

**VERSUS**

**ANYTIME LIMITED.....RESPONDENT/APPLICANT**

**RULING**

1. The suit proceeded ex parte on 6<sup>th</sup> May 2019, the respondent having failed to attend court for hearing despite that the date was taken by consent of the parties on 2<sup>nd</sup> October 2018.
2. The application dated 18<sup>th</sup> October 2019 seeks to have the proceedings set aside and the matter to commence afresh and that the order to have final submissions filed by the claimant be stayed also.
3. The applicant states that the office of the Counsel for the respondent 'failed to diarize the hearing date' hence the non-attendance on 6<sup>th</sup> May 2019.
4. Mr. Mose Nyambega for the respondent deposes to the fact that the failure was an inadvertent error. That the failure should not be visited on the litigant and the respondent be allowed to participate in the trial.
5. Jurisprudence by the courts is supportive of the aforesaid reasoning however, the frequency of counsel failing to attend court and using this ruse to have proceedings set aside is alarming and in my view has become inimical to the expedient hearing and determination of cases.
6. The hearing of this matter took place on 6<sup>th</sup> May 2019 and this application was brought on 23<sup>rd</sup> October 2019 more than five (5) months after.
7. This has often led as is likely in this case to delays of up to one year and more in revisiting a matter that ought to have been concluded long time ago.
8. This is the reason the claimant opposes this application vide a replying affidavit filed on 23<sup>rd</sup> November 2019 emphasizing that counsel for the respondent took the date personally in court and it is not plausible that he then failed to diarize the matter in the manner explained.
9. The claimant states that this was an intentional move by the respondent to delay the conclusion of the matter which by itself is a denial of justice to the claimant. That the prolonged delay in filing this application is a further indicator of the intention to delay conclusion of this matter. The claimant prays that the application be dismissed with costs.

**Determination**

10. The court is persuaded that the delay in bringing this application is inordinate and the reason for failure to attend a hearing set down by consent in the presence of both counsel is not sound.
11. For this reason, the court considers the conduct by the respondent to be inimical to expedient administration of justice which in itself is a denial of justice to the claimant herein.

12. The application is thus dismissed with costs and the court will proceed to render its judgment in the matter.

**Ruling Dated, Signed and delivered this 10<sup>th</sup> day of March, 2020**

**Mathews N. Nduma**

**Judge**

**Appearances**

Mr. Sawe for Claimant/Respondent.

Mr. Mose Nyambega for Respondent/Applicant

Chrispo – Court Clerk