



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**  
**AT NAIROBI**  
**CAUSE NO. 1286 OF 2014**

**COLLINS MANGO EGESA.....CLAIMANT**

**VERSUS**

**SUPERIOR HOMES (K) LIMITED.....RESPONDENT**

**RULING**

1. On 15 October 2018, the Court dismissed the Cause because Collins Mango Egesa (Claimant) and Superior Homes (K) Ltd (Respondent) and/or their advocates were not in Court when the Cause was called out for hearing.
2. A year later, on 9 July 2019, the Claimant filed an application under a certificate of urgency seeking an order reinstating the suit. The Court directed that the application be served upon the Respondent and a hearing date be taken in the registry.
3. On 5 August 2019, the Claimant's advocate caused the application to be fixed for hearing on 26 September 2019.
4. However, on 26 September 2019, the Deputy Registrar rescheduled the hearing of the application to 6 November 2019. The Claimant was directed to serve a hearing notice.
5. When the application was called on the scheduled date, the Claimant and/or his advocate were not in Court. The Respondent's advocate who was present applied to have the application dismissed, a request the Court acceded to.
6. On 23 January 2020, the Claimant filed another motion under a certificate of urgency seeking an order setting aside the dismissal of the initial application and restoring it for hearing.
7. The Respondent's advocate on record filed a replying affidavit in opposition to the motion on 10 February 2020 and the Court heard arguments on 3 March 2020.
8. In seeking the Court's exercise of discretion to reinstate the dismissed application, the Claimant explained that the advocate was before another Court and had instructed an Assistant to request an advocate to hold brief but the Assistant came to Court and found the application had been called out and dismissed; that the Court had not followed the cause-list order and that the failure of the advocate to attend Court was an innocent omission.
9. The Respondent in opposing the application countered that the Claimant had a history of disinterest in prosecuting his case before the Court and therefore the Court should not exercise its discretion in his favour.
10. The Claimant's application requires an exercise of the Court's discretion.
11. The Court has looked at the record. The Claimant has not exhibited (did not) diligence in having his case concluded.
12. The explanation now given that the Court did not follow the cause list is a red herring. The Assistant who was in Court did not swear any affidavit. Paragraph 6 of the Claimant's advocate affidavit suggest the Assistant was in Court all through. It is not clear why the Assistant did not request any of the advocates in Courts to hold brief.
13. Reluctantly, the Court will allow the application on terms, that is, the Claimant to pay the Respondent thrown away/wasted costs of Kshs 10,000/- within 10 days, in default, the application will stand dismissed.

**Delivered through video/email, dated and signed in Nairobi on this 22<sup>nd</sup> day of May 2020.**

**Radido Stephen**

**Judge**

**Appearances**

For applicant Ms. Mukala instructed by P.K. Mukala, Advocate

For Respondent Mr. Kinuthia instructed by Nyachoti & Co. Advocates

Court Assistant Judy Maina