



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT KISUMU

CAUSE NO. 73 OF 2014

PAUL JURA OPAPA.....CLAIMANT/APPLICANT

VERSUS

KENYA ORDINANCE FACTORIES CORPORATION...RESPONDENT

RULING

1. The applicant brought application dated 13/8/2019 seeking an Order to set aside the Order of the Court made on 12/3/2018 dismissing the suit for want of prosecution.
2. The claimant/applicant bases the application on the ground that his advocate on record was terminally ill from May, 2015, until he died on 2/7/2018.
3. The applicant did not give any reason in the application why he failed to take any step in person in the matter that was filed on 10/4/2014 for a period of four (4) years until the matter was dismissed by the Court on 12/3/2018 for want of prosecution.
4. As at the time the matter was dismissed not a single step was taken in the matter other than the filing itself and filing of list of documents on 16//4/2014.
5. A notice of change of Advocates was filed on 21/8/2019 more than a year after the matter was dismissed and this application itself was filed on 21/8/2019 on the same date more than a year after the matter was dismissed.
6. The applicant has proffered no justifiable reason why the Court should exercise its discretion to reinstate the matter. In any event the application is opposed by the respondent vide the replying affidavit of Samuel Mwaura Mburu the Legal Officer of the respondent and in the written submissions and indeed no summons were taken out at all by the claimant in this matter upon filing of the suit which aggravates the failure by the claimant to prosecute the suit at all.
7. As per the case of **Abdulbasit Mohamed Dahman & Another –vs- Fidelity Commercial Bank Limited (2016) eKLR** this suit had abated already.
8. The dismissal of the suit and closure of the file served to cement the position so as to decongest the Court system.
9. The application lacks merit and is dismissed with no Order as to costs.

Dated and delivered at Nairobi this 17th day of December, 2020.

MATHEWS N. NDUMA

JUDGE

ORDER

In view of the declaration of measures restricting court of operations due to the COVID-19 pandemic and in light of the directions issued by his Lordship, the Chief Justice on 15th March 2020, this ruling has been delivered to the parties online with their consent. They have waived compliance with **Order 21 rule 1 of the Civil Procedure Rules** which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court has been guided by **Article 159(2)(d)** of the Constitution which requires the court to eschew undue

technicalities in delivering justice, the right of access to justice guaranteed to every person under **Article 48** of the Constitution and the provisions of **Section 18 of the Civil Procedure Act (chapter 21 of the Laws of Kenya)** which impose on this court the duty of the court, *inter alia*, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

MATHEWS N. NDUMA

JUDGE

Appearances

Mr. Green for Claimant

Mr. Klachira for Respondent

Chrispo- Court clerk.