



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF
KENYA AT NAIROBI
CAUSE NO 1847 OF 2013

VINCENT NGILA KATILU.....CLAIMANT

VERSUS

AIRTEL NETWORKS (K) LIMITED.....RESPONDENT

RULING

1. The suit was dismissed by Lady Justice Mbari on 2nd March, 2017 when the same came up for hearing and only the respondent was present.
2. From the record, the matter has been adjourned on more than one occasion due to the absence of the claimant's counsel. The claimants filed a notice to act in person on 24th July 2018 over one year after the dismissal of the suit and has concurrently therewith brought the present application.
3. In the affidavit in support of the application he says in essence that there was breakdown in communication between him and his advocate when the advocate handling the matter left the law firm of Rachier and Amolo.
4. The claimant further deponed that he complained to the office of the Ombudsman about the loss of the court file and the fact that the Registry had issued a date during vacation in August, 2016. In December, 2016 he visited the law firm of Rachier and Amolo and was informed that Mr Juma who was handling the matter had left the firm and one Miss Laila Abdullatiff was the one who took over the matter. Sometimes in March 2018 the claimant deponed that he visited the Registry and was informed the suit had been dismissed for non-attendance.
5. The claimant does not seem to give a good account of what happened in December 2015 when he visited his advocates and March 2018 when he visited the Registry and was informed his case had been dismissed for non-attendance. This is a period of over one year and for a person who was actively following his case this does not sound plausible. Further, it took the claimant another four months to file the present application and no explanation has been given by the claimant for the delay. Besides the claimant has not come clear in his affidavit what steps he took to take up the matter of dismissal of this claim with his advocate before deciding to act in person.
6. This is a 2013 matter and the same was dismissed for non-attendance over one year ago. Setting aside an order of dismissal for non-attendance is discretionary. In order to exercise the discretion in favour of the applicant, he must give reasonable cause why the discretion should be exercised in his favour. Further the application must be brought without unreasonable delay. This has not happened here.
7. The court will therefore not exercise its discretion in favour of the applicant. The application is therefore dismissed with costs.
8. It is so ordered.

Dated at Nairobi this 25th day of January, 2019

Abuodha Jorum Nelson

Judge

Delivered this 25th day of January, 2019

Abuodha Jorum Nelson

Judge

In the presence of:-

.....for the Claimant and

.....for the Respondent.

Abuodha J. N.

Judge