



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**

**CAUSE NO. 1015 OF 2013**

**WINFRED WAMURANGA KIAMA.....CLAIMANT**

**v**

**FIESTA RESTAURANT LIMITED.....RESPONDENT**

**RULING**

1. For determination is an application dated 27 September 2018 by the Claimant seeking orders

1. ...

2. **THAT** the main suit herein be reinstated and be listed for hearing on an urgent and priority basis.

3. **THAT** the costs of this application be provided for.

2. The grounds advanced in support of the application are that the advocate on record mistakenly took the *wrong date* and that the mistake of an advocate should not be visited upon a litigant.

3. The Respondent, through its advocate filed a replying affidavit in opposition to the application, and it was therein asserted that the dismissal in question was the second dismissal of the Cause; the application was an afterthought and an abuse of the court process.

4. The Court has looked at the record and considered the material placed before it.

5. The Cause was first dismissed on 11 May 2015 because the Claimant was absent for hearing despite having caused the hearing date to be fixed.

6. The reason given by the Claimant in seeking the setting aside of the dismissal order was that the advocate had mis-diarised the hearing date.

7. The ground advanced in respect of the instant application is taking the *wrong date*. It is still the same reason albeit in slightly different words.

8. Despite asserting that the failure to attend Court was due to taking the wrong date, the Claimant's advocate has not disclosed that *wrong date* and whether the Claimant was advised to attend Court for hearing during that *wrong date*.

9. There is even no disclosure as to when the Claimant's advocate realised he had taken the wrong date. Such disclosure would have enabled the Court to determine whether there was inordinate delay in lodging the application in Court.

10. As it is, the application has been filed some 5 months after the dismissal.

11. Further, the conduct of the Cause appears to have been casual and dilatory.

12. In the circumstances, the Court declines to exercise its discretion in favour of the Claimant.

13. The application dated 27 September 2018 is dismissed with costs to the Respondent.

**Delivered, dated and signed in Nairobi on this 25<sup>th</sup> day of January 2019.**

**Radido Stephen**

**Judge**

**Appearances**

For applicant Mr. Swaka instructed by Swaka Advocates

For Respondent Mr. Achungo instructed by Daniel Orege & Co. Advocates

Court Assistant Lindsey