



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO. 260 OF 2015

AGGREY SHILEKA INDONGOLE.....CLAIMANT

VERSUS

STEEL MAKERS LIMITED.....RESPONDENT

RULING

1. On 28 February 2018, the Claimant's advocate representative appeared before the Deputy Registrar and caused the Cause to be scheduled for hearing on 15 October 2018.
2. When the Cause was called out for hearing on the scheduled date, the Claimant and his advocate were absent. The Respondent's advocate was in Court.
3. In consideration of the absence of the Claimant and his advocate, the Court ordered the Cause dismissed with costs to the Respondent.
4. On 25 January 2019, the Claimant filed a motion seeking orders
 1. **THAT** the order of dismissal of this suit with costs for want of prosecution issued on the 15th October 2018 be reviewed and or be set aside.
 2. **THAT** the suit be reinstated for hearing based on its merit.
 3. **THAT** costs of this application be in the cause.
5. The Claimant urged the application on 25 February 2019.
6. The grounds on which the application was anchored were that the Cause though fixed for hearing on 15 October 2018, was listed in the online cause list before Hon Ngumi, the Deputy Registrar in Court 402 and not this Court and therefore the advocate decided to go before the subordinate Court to hold brief for another advocate.
7. According to the advocate, when he later inquired he was informed that the Cause had been placed before Court sitting in Room 103, and when he reached the Court, he found the Cause had already been dismissed.
8. The facts as presented by the Claimant are not disputed.
9. However, the Claimant did not explain why it took about 3 months to file the application having become aware of the dismissal of the Cause on the day it had been scheduled for hearing on 15 October 2018.
10. There has also been no disclosure as to whether the Claimant had been advised to attend Court for the hearing on 15 October 2018 to demonstrate that he was ready to prosecute his case on the scheduled hearing date.
11. In the view of the Court, the unexplained delay in filing the application, and failure to disclose the whereabouts of the Claimant on the material day swerve the sword of justice against exercise of the Court's discretion in favour of the Claimant.
12. The application is declined, and is dismissed with no order as to costs.

Delivered, dated and signed in Nairobi on this 29th day of March 2019.

Radido Stephen

Judge

Appearances

For Claimant Mr. Njenga instructed by Njogu & Associates

For Respondent did not participate

Court Assistant Mercy