

Claimant.

9. In opposition to the application, the Claimant contended that the Respondent had failed to comply with pre-trial directions; that the Respondent had shown a pattern of not attending Court sessions previously; that the Respondent had delayed in filing the application and that the orders sought could not be granted without an application for review and/or setting aside being successfully mounted.

10. The Court has considered all the material placed before it.

11. The *Response* filed in Court consisted of mere denials save for the assertion that the Claimant was not an employee of the Respondent.

12. Without making any definite finding on the employment relationship, the Court notes that the Claimant had filed and served with the *Statement of Claim*, secondary evidence from a governmental body, showing existence of an employment relationship with the Respondent.

13. On the merits of the application, it is correct as asserted by the Claimant that the Respondent had demonstrated a pattern of not attending Court. The Respondent did not attend Court for pre-trial on 2 July 2018 and before the registry on 14 December 2018 to fix a hearing date.

14. The Respondent was directed on 2 July 2018 to file witness statements and documents. The order was not complied with.

15. In an attempt to explain the failure, the Respondent contended that its key witness had left employment and therefore it had taken time to locate him.

16. It is instructive that the Respondent did not disclose when the said witness left employment. The disclosure would have been material in order for the Court to determine its *bona fides* in relation to when the *Response* was filed, and when pre-trial directions were given.

17. The Court finds the assertion a mere excuse.

18. Further, the Respondent did not demonstrate that it had indeed misdiarised the hearing date. No extract of the diary or copy of any letter sent to the Respondent notifying it that a hearing had been fixed for 19 May 2019 (a Sunday) were produced.

19. The Respondent failed to satisfy the Court to exercise its discretion in its favour, and the Court dismisses the application dated 12 March 2019 with costs to the Claimant.

Delivered, dated and signed in Nairobi on this 26th day of March 2019.

Radido Stephen

Judge

Appearances

For Claimant Mr. Gomba instructed by Charles Gomba & Co. Advocates

For Respondent Mr. Wachira instructed by J. Thongori & Co. Advocates

Court Assistant Lindsey