

REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS

COURT OF KENYA AT NYERI

CAUSE NO. 145 OF 2018

CONSOLIDATED WITH CAUSE NO. 146, 147, 148 & 149 OF 2018

ALICE NKIROTE MURIUNGI & 4 OTHERS.....CLAIMANTS

VERSUS

DELMONTE (K) LIMITED.....RESPONDENT

RULING

1. The Claimant seeks through the notice of motion dated 6th March 2019 but filed in court on 5th March 2019 to reinstate Cause No.s 145 of 2018, 146 of 2018, 147 of 2018 and 148 of 2019. The grounds on the face of the motion and in the affidavit of Grace Kiongera Advocate are that the suit was dismissed for non-attendance due to failure of her office to diarise the matter when the hearing notice was served and also because the advocate who held brief at the taking of the date did not inform her of the date fixed. The Respondent is of course opposed to grant of the orders sought and filed a replying affidavit sworn by Mabeya George Masese Advocate. He deponed that there were insufficient grounds to warrant reinstatement of the suit and that the Claimants were being untruthful.

2. In an application such as this one seeking reinstatement of the suit, a court is required to exercise its discretion in the grant or denial of the orders sought. Applying the principle that the court's discretion to set aside is intended to be exercised to avoid injustice or hardship resulting from accident, inadvertence, or excusable mistake or error, but not to assist a person who has deliberately sought whether by evasion or otherwise to obstruct or delay the cause of justice, the motion before me should be denied. It is inconceivable that the Claimants or their advocate could fail to ascertain the date fixed for hearing especially when instructions had been given for someone to hold their brief which was actually done as the record shows. The Claimants or the Advocate further had the option of calling the Employment & Labour Relations Court Registry to ascertain the date fixed. The Claimants are undeserving of the grant of the discretionary powers of the court as the series of errors they catalogue are neither mistake, inadvertence or excusable error. The application is dismissed albeit with no order as to costs.

It so ordered.

Dated and delivered at Nyeri this 12th day of June 2019

Nzioki wa Makau

JUDGE

I certify that this is a

true copy of the Original

Deputy Registrar