



**REPUBLIC OF KENYA**

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

**CAUSE NO. 615 OF 2017**

**JAMES MURAGE NGURU.....CLAIMANT**

**VERSUS**

**BOARD OF MANAGEMENT, HIGHWAY SECONDARY SCHOOL.....RESPONDENT**

**RULING**

1. The Cause herein was dismissed on 4 February 2019 because the Claimant and his advocate did not attend the hearing. It is the Claimant who had caused the fixing of the hearing date.
2. On 3 April 2019, the Claimant filed a motion seeking an order setting aside the dismissal order, and reinstating the Cause to hearing.
3. The grounds in support of the application were that the hearing date had been misdiarised; that the Claimant had a meritorious cause of action and that the Respondent would not be prejudiced.
4. To demonstrate the misdiarisation, the Claimant exhibited a copy of hearing notice served upon the Respondent and which was acknowledged. It showed a hearing date of 4 March 2019.
5. The Principal of the Respondent school filed a replying affidavit in opposition to the application. It was contended therein that the advocate who filed the application was not properly on record, and that the Claimant was not vigilant having filed the application 2 months after the dismissal of the Cause.
6. The parties also filed submissions and the Court has considered the same.
7. The Statement of Claim was filed on behalf of the Claimant by the firm of Masika & Koross, Advocates on 30 March 2017.
- 8.. There is no *Notice of Change of Advocate* or *Notice of Appointment* on record to signify that the Claimant at any point in time instructed the firm of Were Lukoko & Co. Advocates to come on record or act for him.
9. In the view of the Court, the issue of representation or legal capacity of the firm of Were Lukoko & Co. Advocates to purport to act for the Claimant is so fundamental that without formal notification of coming on record or grant of leave to come on record, the application under consideration cannot stand.
10. The application filed in Court on 3 April 2019 is struck out with costs to the Respondent.

**Delivered, dated and signed in Nairobi on this 20<sup>th</sup> day of September 2019.**

**Radido Stephen**

**Judge**

**Appearances**

For Claimant                      Lukoko Were & Co. Advocates

For Respondent                      Christine Oyugi, Senior Litigation Counsel, Office of the Attorney General

Court Assistant

Lindsey