

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

CAUSE NO. 16 OF 2018

(Before Hon. Justice Mathews N. Nduma)

JACOB ALUOCH RANGL.....CLAIMANT

VERSUS

THE BOARD OF MANAGEMENT LUORA SECONDARY SCHOOL....RESPONDENT

RULING

1. The suit was dismissed for non-attendance by the claimant without explanation. The hearing date on 6th February 2019 had been taken in court by the Advocates for the claimant on 8th May 2019 but the claimant and his advocate failed to turn up for the hearing. M/S Imbaya, Advocate for the respondent applied for the matter to be dismissed.
2. The claimant filed application dated 18th February 2019 on the even date seeking to have the order dismissing the suit be set aside and the suit be reinstated on the grounds that the claimant's advocate arrived in court at 9.35 am and found the matter had been called and dismissed. That the late arrival of the advocate was occasioned by a mechanical problem that developed in the Advocate's vehicle on the way to court. The Advocate was unable to get an advocate to hold brief before he arrived. That the late arrival was not deliberate and seeks indulgence by the court.
3. The application is opposed by a replying affidavit of M/S Imbaya who states that there is no explanation why the claimant himself was not in court even if the Advocate had been delayed by a mechanical problem. That the claimant is not candid with the court and the court ought not to exercise discretion in their favour.
4. The court notes that this is a matter filed in the year 2018. The day it was dismissed was the first time it had been set for hearing. The explanation given by the advocate for the claimant for the late coming to court is reasonable
5. The court finds that the claimant shall be greatly prejudiced for no fault of his own if the dismissal is not set aside.
6. The application is granted provided the claimant pays wasted costs to the respondent advocates in respect of 6th February 2019 when the matter could not proceed to full hearing.

Ruling Dated, Signed and delivered this 16th day of September, 2019

Mathews N. Nduma

Judge

Appearances

Mr. Nyauke for Claimant/Applicant

M/S Imbaya for Respondent

Chrispo – Court Clerk