



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA**

**AT NAIROBI**

**CAUSE NO. 776 OF 2015**

**JOHN MWANGANGI.....CLAIMANT**

**- VERSUS -**

**PUBLIC SERVICE COMMISSION.....1ST RESPONDENT**

**PRINCIPAL SECRETARY MINISTRY OF LANDS.....2ND RESPONDENT**

**HON. ATTORNEY GENERAL.....3RD RESPONDENT**

(Before Hon. Justice Byram Ongaya on Friday 25th October, 2019)

**RULING**

The Court dismissed the suit on 02.04.2019 for want of prosecution with no orders on costs. The case had been fixed for hearing on that date when the claimant's respondent applied that the same be adjourned on account that the claimant was working in the US and was not present to prosecute the case. The claimant has filed a notice of motion on 08.05.2019 through Lee Maina & Associates Advocates for orders that the Court does review and set aside its orders for dismissal of the suit herein made on 02.04.2019 and reinstates the suit for hearing and for costs in the cause.

The application was under rule 33 of the rules of the Court and section 16 of the Employment and Labour Relations Court Act, 2011 and all enabling law. It was based on the supporting affidavit of Lee Maina Mugo Advocate and upon the following grounds:

- a) The suit was dismissed for non-attendance and want of prosecution.
- b) The applicant's advocate had attended Court and informed the Court that the claimant could not attend Court because he was in the US and where he was gainfully employed.
- c) The claimant has always been ready and willing to prosecute the suit.
- d) The application was filed without inordinate delay.
- e) The respondent will not suffer prejudice.
- f) The supporting affidavit by the Advocate narrates the court proceedings of 02.04.2019.

The respondents opposed the application by filing on 20.06.2019 the replying affidavit of learned State

Counsel Leah Odhiambo. The application is opposed upon the grounds that the application sets out no grounds to justify a review and setting aside orders as prayed for; 02.04.2009 was fixed for hearing before the Deputy Registrar in presence of counsel for both parties; the suit was filed in 2015 and time had run without the suit being heard and determined; the reason for dismissal of the suit for want of prosecution was that the claimant was outside the jurisdiction and therefore not ready to prosecute the suit and there was no material to show that the situation had changed; the application was prejudicial to respondents and should not be allowed; and the claimant had failed to prosecute the suit.

The Court has considered the parties' respective cases and submissions. As urged for the respondents there is no material before Court establishing any of the known and prescribed grounds that may justify granting of a review. The situation as it was on 02.04.2019 has not changed and there is no alleged new evidence or error on record or manifest injustice to shift the findings by Abuodha J on 02.04.2019 that the claimant should not have filed the suit and placed himself outside jurisdiction leaving the claim dormant. In the circumstances, the Court returns that the application will fail as it is not justified.

In conclusion the application filed for the claimant on 08.05.2019 and dated 07.05.2019 is hereby determined with orders the application is hereby dismissed; and the applicant to pay costs of the application.

**Signed, dated and delivered** in court at **Nairobi** this **Friday 25th October, 2019**.

**BYRAM ONGAYA**

**JUDGE**