



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO. 1284 OF 2013

MAES MBARWA DUDAH

PETERSON MUTUNGA MUSILI

ELIZABETH NYABOKE

DORCAS KIMEU

(SUING ON BEHALF OF THEMSELVES & 82 ORS.....CLAIMANTS

V

HON ATTORNEY GENERAL.....1ST RESPONDENT

PRINCIPAL SECRETARY, MINISTRY OF HEALTH.....2nd RESPONDENT

NASCOP.....3rd RESPONDENT

RULING NO. 2

1. The Cause herein came up for hearing on 23 December 2014 but was adjourned at the request of the Claimants as their witnesses were not in Court.
2. When the Cause again came up for hearing on 23 January 2015, the Claimants presented 2 witnesses after which hearing was rescheduled to 12 March 2015.
3. However, on this latter hearing date Claimants closed their case because further witnesses were not available. The Respondent's case was fixed for 6 May 2015.
4. The Respondents case did not proceed on 6 May 2015 as they were not ready. The Court adjourned the hearing to 20 July 2015. None of the parties attended Court on 20 July 2015 and hearing was rescheduled to 28 July 2015. The parties did not appear even on the rescheduled date.
5. The Cause next came for hearing on 6 April 2017. The Claimants were absent, and the Court, on the application of the Respondents dismissed the suit.
6. On 17 April 2019, the Claimants moved the Court to review and set aside the dismissal order, and the main grounds advanced in support of the application were that the previous advocates had been negligent; that the Claimants only became aware of the dismissal order on 26 March 2019; that a *Notice to Show Cause* was not served, and that the previous advocate had misrepresented to the Claimants that hearing had closed and judgment was awaited.
7. The Claimants urged that the dismissal had (would) occasioned them great injustice.
8. Although served with the motion, the Respondents did not respond or attend the Court during the hearing of the application.
9. The Court has keenly considered the record. The Claimants closed their case on 23 January 2015.
10. It was therefore in error for the Court to order the dismissal of the suit for want of prosecution on 6 April 2017 upon the application of the

Respondent

11. The correct procedure would have been to take the Respondents case in the absence of the Claimants, and then prepare judgment (it is not clear from the record whether the Respondents were ready to proceed with the hearing on the date of dismissal).

12. The Court will therefore

i. Allow the motion dated 16 April 2019.

ii. Direct the firm of Githongori & Harrison Associates Advocate do apply to formalise their representation of the Claimants.

iii. Direct that the file be placed before the Principal Judge to allocate a judge to take the Respondents' case, in view of the fact that the trial Judge is no longer based in Nairobi.

13. Costs in the cause.

14. The Court regrets that this Ruling could not be delivered on 27 September 2019 due to other official commitments.

Delivered, dated and signed in Nairobi on this 11th day of October 2019.

Radido Stephen

Judge

Appearances

For Claimants Githongori & Harrison Associates Advocates

For Respondents Hon. Attorney General

Court Assistant Lindsey