



**REPUBLIC OF KENYA**

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

**CAUSE NO. 55 OF 2016**

**SOLOMON NGARUIYA NDUNGU.....CLAIMANT**

**v**

**KIRINYAGA CONSTRUCTION (K) LTD.....RESPONDENT**

**RULING NO. 3**

1. The Cause herein was dismissed 4 December 2018.
2. On 7 February 2019, the Court dismissed an application by the Claimant seeking to have the dismissal order set aside and have the Cause reinstated because the Claimant's advocate was not in Court to prosecute the application.
3. On the same day, the Claimant filed another application seeking orders reviewing the orders made earlier that day as well as orders reviewing and setting aside the dismissal order of 4 December 2018.
4. The Court dismissed the application on 8 March 2019 (Ruling No. 2) and the reasons are on record.
5. On 10 September 2019, the Claimant, now represented by a new firm of advocates, filed yet another application seeking orders setting aside the dismissal order of 4 December 2018.
6. The principal ground advanced was that the advocate then on record had failed to inform him (Claimant) about the hearing date.
7. The Claimant urged that he had an arguable case and that no prejudice would be occasioned to the Respondent if the orders sought were granted.
8. The Respondent resisted the application accusing the Claimant of inordinate delay and indolence, and that no justifiable reasons had been advanced.
9. The grounds advanced by the Claimant now are the very same reasons which the Court found insufficient in its Ruling No. 2 of 8 March 2019, only that now they have been embellished differently.
10. The Court finds the present application not only unmerited, but an abuse of the Court process as the grounds relied on were considered and rejected earlier.
11. In the view of the Court, it is not that the Claimant has no probable remedy against the advocates who failed him.
12. The application is dismissed with costs to the Respondent.

**Delivered, dated and signed in Nairobi on this 29<sup>th</sup> day of November 2019.**

**Radido Stephen**

**Judge**

**Appearances**

For Claimant Mr. Mutanda instructed Gitonga Mureithi & Co. Advocates

For Respondent Mrs. Gitau instructed by Muchoki Kangata Njenga & Co. Advocates

Court Assistant Lindsey