



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 170 OF 2017

PETER M. KIMOTHO.....CLAIMANT

VERSUS

HON. ATTORNEY GENERAL.....1st RESPONDENT

PERMANENT SECRETARY, PROVINCIAL

ADMINISTRATION & INTERNAL SECURITY.....2nd RESPONDENT

COUNTY COMMISSIONER KIAMBU.....3rd RESPONDENT

RULING

1. On 13 November 2018, the Court upheld a preliminary objection by the Respondents that the cause of action advanced by the Claimant was statute time barred.
2. On 1 November 2019, the Claimant moved the Court under certificate of urgency seeking an order setting aside the orders of 13 November 2018.
3. The application was urged on 21 November 2019 and is the subject of this Ruling.
4. The primary grounds urged in support of the application are that the Claimant was not aware of the hearing date and that the Cause had high chances of success.
5. The Court has looked at the record.
6. On 26 October 2018, the Claimant's advocate issued a mention notice directed to the Respondents notifying them that the Cause was coming up on 30 October 2018.
7. The Claimant and/or his advocate did not attend Court on 30 October 2018 at which appearance the Respondents informed the Court that they had filed a Notice of Preliminary Objection.
8. The Court directed that the Preliminary Objection be taken on 13 November 2018.
9. On 9 November 2018, the Claimant caused to be issued and served upon the Respondents a mention notice indicating that the Cause was coming for formal proof on 13 November 2018.
10. The Claimant and his advocate nevertheless did not attend Court on 13 November 2018 and the Court allowed the Respondents to prosecute the Preliminary Objection culminating in the dismissal of the Cause.
11. The assertion by the Claimant that he and/or his advocate were not aware of the proceedings on 30 October 2018 and 13 November 2018 cannot be truthful.
12. It took the Claimant over 1 year to move the Court to attempt to set aside the dismissal order. No explanation was tendered for the 1 year delay. The Court finds it inordinate.

13. The conduct of the Claimant in prosecuting his suit has at the very least been professionally reckless.

14. The consequence of the forgoing is that the Court finds no merit in the application and orders it dismissed with costs.

Delivered, dated and signed in Nairobi on this 22nd day of November 2019.

Radido Stephen

Judge

Appearances

For Claimant Mr. Mutali instructed by Mutali Wanyama & Co. Advocates

For Respondents Ms. Chesyna, State Counsel, Office of the Attorney General

Court Assistant Judy Maina