



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO. 473 OF 2015

ANDERSON MAKAYA.....CLAIMANT

v

PREMIER INDUSTRIES LIMITED.....RESPONDENT

RULING

1. On 10 July 2017, the Claimant caused the Registry to schedule the Cause for hearing on 8 February 2018.
2. When the Cause was called out for hearing on the scheduled date, the Claimant and his advocates on record Gakoi Maina & Co. Advocates were absent.
3. The Court consequently dismissed the Cause.
4. On 28 February 2018, the Claimant through the firm of Mwaniki Njuguna & Co. Advocates moved the Court seeking orders
 1. **THAT** the law firm of **MWANIKI NJUGUNA & CO. ADVOCATES** be granted leave to come on record on behalf of the Claimant/Applicant.
 2. **THAT** the Order of the Honourable Court delivered on **8th February, 2018** by the Honourable Justice Radido dismissing the suit filed herein on **25th March, 2015** be set aside and/or varied.
 3. **THAT** the suit filed herein on **25th March, 2015** be reinstated.
 4. **THAT** the costs of the Application be provided for.
5. When the application came up for hearing on 14 March 2018, the Claimant indicated that he was ready to proceed.
6. The Respondent however sought an adjournment and leave to file a replying affidavit in opposition to the application.
7. The Claimant opposed the request by the Respondent on the ground that the application had been served on 28 February 2018.
8. The Court declined the request by the Respondent on the ground that it had had sufficient time to file responses to the application (about 2 weeks).
9. The Claimant addressed the Court while the Respondent did not present any arguments.
10. The reasons advanced by the Claimant in seeking the orders set out above were that the instant application had been presented without inordinate delay, that the mistakes of an advocate should not be visited upon a client, that the advocate then on record had not been diligent, that he stood to suffer irreparable loss and that Court should not have undue regard to technicalities.
11. The Court has considered the arguments presented by the Claimant and come to the conclusion that the application is not only incompetent but unmerited.
12. The incompetence arises because the advocate who has presented the application did not secure the consent of the advocate who was on record at the time the Cause was dismissed.

13. On the merits, it is the view of the Court that the failure of an advocate to attend Court for hearing without explanations being tendered as to the failure is not a mistake but professional negligence and recklessness bordering on negligence.

14. It is telling that no explanation has been offered at all as to why the advocate who fixed the Cause for hearing did not attend Court.

15. The proposition therefore that the Claimant stands to suffer irreparable loss has no foundation as he can pursue an appropriate cause against the advocate.

16. The Court declines to accept the invitation by the Claimant and orders that the application dated 26 February 2018 be dismissed with no order as to costs.

Delivered, dated and signed in Nairobi on this 19th day of March 2018.

Radido Stephen

Judge

Appearances

For Claimant Mr. Genga instructed by Mwangi Njuguna & Co. Advocates

For Respondent Akoto & Akoto Advocates

Court Assistant Lindsey