



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR
RELATIONS COURT AT MOMBASA
CAUSE NUMBER 576 OF 2017

BETWEEN

ALBERT OTIENO ANYANGO.....CLAIMANT

VERSUS

MITCHELL COTTS FREIGHT [K] LIMITED.....RESPONDENT

RULING

1. 6 former Employees of the Respondent, who include the Claimant herein, filed separate Claims against the Respondent for recovery of terminal benefits and compensation for unfair termination. The other Claimants are: Vincent Owino Oduor [577 of 2017]; Stephen Onyango Agari [578 of 2017]; Andeka Owino Okech [579 of 2017]; Benard Otieno Ochieng' [580 of 2017]; and Ernest Oduor Odol [581 OF 2017].

2. On 26th September 2017, the matters were mentioned in the presence of Counsel for the respective Parties. It was directed that the Respondent files its Witness Statements and Documents within 21 days. Parties agreed they would return to Court on 8th November 2017 for further directions.

3. None appeared in Court on 8th November 2017. The Court noted the matters had been scheduled for mention with the consent of the Parties. In the absence of the Parties, the matters were dismissed for non-attendance.

4. The Claimants subsequently filed an Application dated 9th November 2017, seeking to have dismissal orders reversed. They rely on the Affidavit of the Claimant Stephen Onyango Ogari [578 of 2017], sworn on 9th November 2017.

5. He states that Counsel for the Claimants had on 26th September 2017, briefed another Counsel to hold his brief. The other Counsel advised Claimant's Counsel that the date taken for mention was 9th November 2017, while the correct date was 8th November 2017. Counsel for the Claimant was engaged in other matters at the Court in Kwale on 8th November 2017, as he was not aware about mention scheduled for 8th November 2017.

6. The Application is opposed. The Respondent filed Grounds of Opposition on 30th November 2017. Its position is that it was the responsibility of the Claimants to track proceedings. The mention date was taken by consent. The Claimants have no reason to invent excuses. An extract of Counsel's diary purporting to show wrong entry on mention date was made, is not conclusive proof of the assertions made by the Claimants in explaining non-attendance.

The Court Finds:-

7. The Claimants have shown that failure to attend Court on 8th November 2017 was unintentional. Counsel holding brief for the Claimants' Counsel, did not communicate the correct date taken for mention on 26th September 2017.

8. This position is supported by copies of Claimants' Counsel's Court Attendance Docket Form marked 'SOO 1' and extract of Diary marked 'SOO 2.' The Court notes also, that Counsel for the Claimants is a regular Practitioner in this Court, and is not given to absenting himself from the call of duty.

9. The Claimants should not feel however, that the order for dismissal was draconian. When Parties commit the Court to adjudicate their rights and obligations, and fail to present themselves to the Court to move the process forward, the most suitable order the Court can issue is an order for dismissal. An order, to stand over the matter generally, encourages case backlog. The Courts are under pressure to administer justice expeditiously and reduce case backlog. This cannot be achieved in the absence of the Parties. Being in Court when required to be

there, is half of the dispute resolved. The orders of dismissal in this context are not harsh, or excessive.

10. As the Respondent was similarly absent on 8th November 2017, the Court orders that costs of the Application shall be in the cause.

IT IS ORDERED:-

a) The Application filed by the Claimants dated 9th November 2017 is allowed.

b) Costs in the cause.

c) The Ruling shall apply in all the related files.

Dated and delivered at Mombasa this 8th day of March 2018.

James Rika

Judge