



REPUBLIC OF KENYA

EMPLOYMENT & LABOUR RELATIONS COURT OF KENYA

AT KERICHO

CAUSE NO.231 OF 2015

(Before D. K. N. Marete)

JARED SAKWA KIBWAGE.....CLAIMANT

VERSUS

JAMES FINLAYS (K) LIMITED (MARITANY ESTATE).....RESPONDENT

RULING

This is an application by the claimant/applicant dated 8th December, 2017 seeking the following orders of court;

- a. THAT this Honorable Court's orders issued on 31st October, 2017 be set aside and the claimants claim herein be reinstated and the same be set down for hearing and final determination on its own merit.*
- b. That costs of this application be in the cause.*

The application is grounded as follows;

- a. That the above matter was coming up in court for mention on 31/10/2017 and the claimants' counsel were only served with a mention Notice by the Honourable court and not a notice to show cause why the matter should not be dismissed.*
- b. That on 31st day of October, 2017 the claimant's counsel send another lawyer who held brief for him but the court went on to hear and dismiss the claimant's suit for want and prosecution.*
- c. That the claimant will suffer irreparable loose and damages if this matter is not heard to its logical conclusion.*
- d. That the claimant/applicant and his Advocate are still interest in pursuing this case to it's logical conclusion.*
- e. That it will be prejudicial to the claimant/applicant if the claim is not reinstated because he is still interested in prosecuting it up to the end.*
- f. That the Respondent will not suffer any prejudice if the claimants/Applicants claim reinstated and heard to its conclusion.*
- g. That in the circumstances it is only fair and just that the court's order of 31/10/2017 be set aside and the applicants application be allowed.*
- h. That in the circumstances it is only fair and just that the court's order of 31/10/2017 be set aside and the applicants application be allowed.*
- i. That it will be in the interest of justice if the orders sought herein by the claimant/Applicant are granted.*

The application is not defended, or at all.

The matter came for hearing on 21st May, 2018 when Mr. Chepkwony, counsel for the claimant/respondent prayed that the application be allowed as prayed.

This matter has a curious prosecution history most outstanding being that on 15th December, 2016, it was set for hearing on 25th January, 2017. On this date, the respondent was ready to proceed but the claimant was absent. The hearing was rescheduled to 7th February, 2017 at 900 hours.

On 7th of February, 2017, the date of hearing, there is no appearance for the parties forcing the court to direct them to take a hearing date at the court registry. Then, the court on its own motion set the matter for mention on 28th February, 2017 with a rider that notice would issue to the parties but this did not take off. No reasons are disclosed for this default.

The court again on 12th October, 2017 fixed the matter for mention on 31st instant but again there was no appearance for the parties. This was despite a notice dated 13th October, 2017 and issued to the parties. This notice included a notice of dismissal for want of prosecution.

The claimant/applicant at ground (b) of the application avers that the claimant's counsel sent a lawyer to hold brief for him but the court went on to hear and dismiss the suit for want of prosecution. This is far from the truth. The record indicates that there was no appearance for the parties. This record speaks louder than all of us combined.

This matter was filed on 2nd September, 2015. The claimant took a mention date for direction on 8th September instant. Hence forth, it continued with its chequered prosecution history culminating in a dismissal for want of prosecution and therefore this application.

This is not a matter deserving of setting aside of the orders of court or even reinstatement as prayed in this application. It is a plethora of laxity, lopsidedness and inertia in the prosecution of any suit as set out. This nature of conduct would not win the favour of a court of justice.

The maxim that *equity aids the vigilant, not the indolent* is most applicable in the circumstances. This application must therefore fail.

I am therefore inclined to dismiss the application with orders that each party bears their own costs of the application.

Delivered, dated and signed this 12th day of June 2018.

D.K.Njagi Marete

JUDGE

Appearances

1. Mr. Chepkwony instructed by Chepkwony & Company Advocates for the claimant/applicant.
2. No appearance for the respondent.