



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT

NAKURU

CAUSE NO.266 OF 2015

VITALIS BEN OTIENO CLAIMANT

VERSUS

CATHOLIC DIOCESE OF NAKURU RESPONDENT

RULING

The ruling herein relates to application dated 11th June, 2018 by the respondent, Catholic Diocese of Nakuru and seeking for orders that;

The court be pleased to reopen the claimant's case for hearing de novo Costs be paid by the claimant

The application is supported by the affidavit of Fr. Bernard Ngaruiya and on the grounds that the matter was fixed for mention on 14th June, 2018 while on 29th November, 2017 the respondent had been served with a hearing Notice for 15th March, 2018 which hearing did not take place as the court was not sitting. The claimant was heard in the absence of the respondent and seeks the case be reopened for the respondent to be able to participate. There will be no prejudice suffered by the claimant.

In his affidavit, Fr. Ngaruiya avers that as a trustee of the respondent he is conversant with the suit herein and on 5th June, 2018 the respondent was served with written submissions noting the claimant had been heard in his case and closed the same. The hearing notice served was for 15th March, 2018 on which date the court did not sit. On The notice issued for 14th June, 2018 the respondent had hoped a hearing date would be fixed to them to attend at the hearing.

Fr. Ngaruiya also avers that upon perusal of the court file the respondent noted that hearing proceeded in their absence and had not been made aware of the same.

In reply, the claimant filed Repaying Affidavit sworn by George Korongo, Advocate for the claimant and who avers that on 15th March, 2018 the matter he had in court was Cause No.428 of 2018 but the court was not sitting. On 27th November, 2018 the respondent was invited to take hearing dates but failed to attend and was issued with a hearing notice for 15th May, 2018 but failed to attend as notified. The claimant was heard on his evidence and case closed and a date for judgement should issues.

Both parties relied on their affidavit and no oral submissions were made.

On the court records, the claimant was allocated a hearing date for 15th May, 2018 and was to issue a hearing notice upon the respondent.

In the Affidavit of John Abuom filed on 15th May, 2018 he avers that on 29th November, 2017 he served the respondent with hearing notice and annexed thereto is a Hearing Notice received by the respondent's advocate and noting hearing would be on **15th March, 2018**. The court did not sit on such date.

On the 15th May, 2018 the court proceeded on the basis that the respondent had been served as the affidavit of Mr Abuom service had been effected. This was by error as a close scrutiny of the record, the hearing date noted to the respondent was 15th March, 2018 and not 15th May, 2018.

The respondent was therefore not aware of proceedings taking place on 15th May, 2018. To proceed on this basis would be prejudicial to the respondent and would result in a miscarriage of justice. Proceedings of 15th May, 2018 are hereby set aside and hearing to commence afresh.

Accordingly, application dated 11th June, 2018 is allowed. Costs in the cause.

Noting the age of the file, a hearing date shall be allocated in court.

Delivered in open court at Nakuru this 31st day of July, 2018.

M. MBARU JUDGE

In the presence of:

Court Assistant.....

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