



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

MISC APPLICATION NO. 173 OF 2017

FRANCIS GITAU KAMAU APPLICANT

v

FACTORY GUARDS LIMITED RESPONDENT

RULING

1. The applicant instituted legal proceedings against the Respondent in 2013 and the Cause was marked as Cause No. 35 of 2013, *Francis Gitau Kamau v Factory Guards Ltd.*
2. The Respondent filed a Defence (the date is not clear from the copy annexed to the application).
3. On 28 April 2015, the applicant filed an application seeking leave to amend the *Memorandum of Claim*. It was indicated in the application that the Cause was to come up for hearing on 3 June 2015.
4. It is not disclosed what happened to the application.
5. On 8 December 2017, the applicant moved Court seeking orders
 1. THAT the Honourable Court do allow the reconstruction of Employment and Labour Relations Cause file Number 35 of 2013, FRANCIS GITAU KAMAU v FACTORY GUARDS LIMITED.
 2. THAT the Honourable Court be pleased to ascertain whether a notice to show cause was heard on 7-4-2017 whereby the Claimant's case was dismissed due to nonattendance by the Claimant and his advocate and set aside the said proceedings in the interest of justice.
 3. THAT in the alternative to prayer 2 above, the Court do find that the applicant has shown sufficient cause why the case should not be dismissed and directions be given that CAUSE NUMBER 35 OF 2013 be heard on merits within the shortest period possible.
6. In support of the application, it was contended that though the Cause was dismissed, the applicant and his advocate were not notified that the Cause was coming up for hearing on 7 April 2017, and that the applicant only became aware of the dismissal of the Cause on 3 October 2017.
7. The application was served upon the Respondent and it filed a replying affidavit in which it was deposed that the Cause was dismissed on 7 April 2017, and that the application was compounded as it sought setting aside and reconstruction of the Court file, and that was improper.
8. The applicant admitted that the failure to attend Court on 7 April 2017 when the Cause was dismissed was due to inadvertence. At the same time he deposed that there was no notification that the Cause was coming up for hearing during the service week in 2017. The two explanations appear inconsistent.
9. Without the Court file, it would not be easy for the Court to determine whether the contentions by the applicant on service were factual.
10. The Court has seen on record a letter dated 15 March 2018 by the Deputy Registrar to the parties indicating that the original file could not be traced.
11. The Court is however not satisfied that the registry has made sufficient efforts to trace the file, and the Deputy Registrar should be given adequate time to trace the file considering that there is information that the file was dealt with during service week on 7 April 2017.

12. The Court therefore directs the Deputy Registrar to make further efforts to trace the file, confirm with appropriate registers whether hearing notice/show cause were served and report back to the Court on 24 October 2018.

Delivered, dated and signed in Nairobi on this 27th day of July 2018.

Radido Stephen

Judge

Appearances

George K. Mwaura & Associate Advocates for applicant

T.K. Kariba Mbabu & Co. Advocates for Respondent

Court Assistant Lindsey