



REPUBLIC OF KENYA

EMPLOYMENT & LABOUR RELATIONS COURT OF KENYA

AT KERICHO

CIVIL CASE NO. 149 OF 2016

(Before D. K. N. Marete)

GEORGE BOSIRE ANGWENYI.....PLAINTIFF

VERSUS

NYAMIRA COUNTY ASSEMBLY.....RESPONDENT

RULING

This is an application dated 20th June, 2018 in which the applicant seeks the following orders of court;

1. That service of this application be dispensed with in the first instance and the same be certified as urgent.

1. That pending the hearing and determination of this application inter-parties this honourable court be pleased to set aside the orders made on 7th November 2017 dismissing the claimants suit for want of prosecution.

2. That pending the hearing and determination of this application inter-parties this honourable court be pleased to reinstate the claimants suit and give a hearing date on priority basis.

3. The costs of this application be provided for.

It is grounded as follows;

a. That the plaintiff suit was dismissed on 7th NOVEMBER 2017 for want of prosecution.

b. That after this matter was in court on 27th July 2017 no other date was served upon the claimants advocate.

c. That on perusal of the court file it was discovered that after the date of 27th July 2017, this matter came up 18th September 2017 when there was no parties.

d. That this matter further came up on 29th October 2017 and 7th November 2017 when again there were no parties.

e. That neither the claimant nor his advocate was notified of the dates until 7th November when the suit was dismissed for want of prosecution.

f. That was the only date served upon us and no other.

g. That the claimant is desirous of having his suit heard and determined.

h. That mistake of an Advocate should not be visited upon an innocent litigants

i. That it's fair that this case be determined on its merits.

This application is not defended, or at all. The respondent remains mum on the subject.

The application is based on grounds of absence of service to the applicant after 27th July, 2017 when it last appeared in court. Inasmuch, the claimant/applicant appears to admit that he was served with the date of 7th November, 2017 when the suit was dismissed for want of prosecution.

This application is allowed. This is because a reinstatement of the suit is not prejudicial to any of the parties. If this was the case, the respondent would have expressly submitted on the same.

I am therefore inclined to allow the application, set aside the orders of dismissal dated 7th November, 2017 and reinstate the claimant's suit.

Delivered, dated and signed this 11th day of July, 2018.

D.K.Njagi Marete

JUDGE

Appearances

1. Mrs Morande holding brief for Mr. Mongeri for the claimant/applicant.
2. No appearance for the respondent.