



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA

AT NAIROBI

CAUSE 1024 OF 2012

LOGIN GIMONDE LWANDEGE & 19 OTHERS....CLAIMANT

VERSUS

ATTORNEY GENERAL & ANOTHER.....RESPONDENT

RULING

1. This suit was on 25th September, 2017 dismissed for want of prosecution by Ndolo J when the same came for hearing and only the respondent was present and applied that it be dismissed for want of prosecution. The claimant's counsel has sought the setting aside of the said order on the basis that the suit was scheduled for mention on 19th October, 2017 before the Deputy Registrar but the same was not listed on that day.

2. He was referred to the cause list section at the Registry by the Deputy Registrar. Upon perusal of the file, counsel found that the matter had been listed for hearing on 25th September, 2017 before Lady Justice Ndolo contrary to the summons to attend court.

3. The court has perused the record and the latest minutes prior to the dismissal of the suit show that the matter was on 23rd May, 2017 listed before Mbaru J for hearing but did not proceed because the claimant was indisposed. Parties were directed by the judge to take a fresh date at the registry. On September, 2017 the matter was listed for hearing before Ndolo J who as stated earlier dismissed the same for want of prosecution at the prompting of the respondent.

4. There is however no minute on record how the date for 25th September, 2017 was fixed and which party fixed it. The claimant therefore could be right that the date was fixed by the court and not served on the claimant. A dismissal of suit for want of prosecution is a drastic order since it deprives a claimant of the right of audience before the court to prosecute their case.

5. The order should therefore be made only in clear and obvious cases where it can be shown that the claimant has indeed lost interest in the matter and the same should be dismissed. A perusal of the record shows this matter has been active with adjournments being occasioned by either side for one reason or the other.

6. This observation coupled with the fact that it was not clear how the date for 25th September, 2017 was fixed makes an excusable case where the court should exercise its discretion and set aside the order of dismissal for want of prosecution.

7. The application is consequently allowed with no order as to costs. Parties to set the suit down for hearing on priority basis.

8. It is so ordered.

Dated at Nairobi this 28th day of September, 2018

Abuodha Jorum Nelson

Judge

Delivered this 28th day of September, 2018

Abuodha Jorum Nelson

Judge

In the presence of:-

.....for the Claimant and

.....for the Respondent