



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**

**CAUSE NO. 504 OF 2011**

**NOURINE YAKUB .....CLAIMANT**

**v**

**SIMOUN TRAVEL LTD.....RESPONDENT**

**RULING**

1. On 14 November 2017, both the Claimant's and Respondent's advocates appeared before the Deputy Registrar for purposes of fixing a hearing date. The hearing was scheduled for 6 February 2018.
2. When the Cause was called out for hearing on the scheduled date, the Claimant and her advocate were absent. The Respondent however sought an adjournment on the ground that the advocate on record was ill.
3. Despite the application by the Respondent, and in consideration of the absence of the Claimant and her advocate who were aware of the hearing on that day and previous absences when the Cause had come up for hearing, the Court dismissed the Cause with no order as to costs.
4. On 15 May 2018, the Claimant filed an application seeking orders
  - a) ....
  - b) **THAT**, the Honourable Court be pleased to set aside an order dismissing the suit herein on 6<sup>th</sup> February 2018 and reinstate the suit.
  - c) **THAT**, the Honourable Court be pleased to make such orders as it may deem fit in the circumstances.
  - d) **THAT**, costs be in the cause.
5. The Respondent's advocate, upon service filed a replying affidavit in opposition to the application on 28 May 2018, and the parties made submissions on 2 July 2018.
6. The main ground advanced by the Claimant for failure to attend Court on 6 February 2018 was that her advocate forgot to diarise the hearing date. It was also asserted that the Claimant had not frustrated the determination of the Cause previously.
7. The Claimant urged that the inadvertent mistake of counsel should not be visited upon her and that she stood to suffer substantial loss while the Respondent would not be prejudiced if the orders sought were granted.
8. In opposing the application, it was contended for the Respondent that the Claimant had not taken appropriate steps to have the Cause heard for over 7 years, which amounted to inordinate delay; the Claimant had not come to Court with clean hands and that the interests of justice did not tilt in favour of granting the orders sought.
9. As the Court noted in the brief ruling dismissing the Cause, the Claimant and her advocate were not in Court when the Cause first came for hearing on 11 April 2012.
10. The advocate on record was present in Court when that hearing date was fixed.
11. Meanwhile, on 23 January 2017 the Court issued a Notice to Show Cause why the suit should not be dismissed and in a brief ruling on 14 March 2017, the Court was afforded an opportunity to prosecute the case.

12. The failure to attend Court on 6 February 2018 therefore should be put in context of earlier conduct.

13. In the view of the Court, the conduct of the Claimant has demonstrated a casual approach to prosecution of this 7 year old case and lack of diligence undeserving of the exercise of the Court's discretion in her favour.

14. The application is dismissed with costs to the Respondent.

**Delivered, dated and signed in Nairobi on this 30<sup>th</sup> day of October 2018.**

**Radido Stephen**

**Judge**

**Appearances**

For Claimant Mr. Manyara instructed by Oyugi & Co. Advocates

For Respondent Ms. Wambui instructed by J.M. Njenga & Co. Advocates

Court Assistant Lindsey