



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

CAUSE NO. 717 OF 2011

JAMES KINYUA.....CLAIMANT

v

UNIVERSITY OF NAIROBI.....RESPONDENT

RULING

1. On 8 March 2017, the Deputy Registrar issued a notice advising the parties herein that the Cause would be heard on 4 April 2017 (during the service week).

2. When the Cause was called out for hearing on the scheduled date, none of the parties (and advocates) were in Court, and the Court dismissed it for want of prosecution.

3. On 20 February 2018, the Claimant moved Court seeking an order setting aside/vacating the dismissal and reinstating the Cause for a hearing on the merits.

4. The Duty Judge certified the application as urgent and directed that it be served upon the Respondent for *inter partes* hearing on 2 May 2018.

5. When the application came up for hearing the aforementioned date, both parties (and advocates) were absent and the Court dismissed the Cause with costs.

6. On 7 May 2018, the Claimant moved Court under certificate of urgency seeking orders

1. ...

2. **THAT** this Honourable Court be pleased to set aside and/or vacate its order dismissing this suit and reinstate the suit for hearing on the merits.

7. However, when the application was placed before the Duty Court, the Claimant applied to have it withdrawn, and the Court allowed the withdrawal.

8. On 9 May 2018, the Claimant lodged another application seeking orders

1. ...

2. **THAT** this Honourable Court be pleased to set aside and/or vacate its order dismissing the Claimant's/Applicant application dated 13th February 2018 and reinstate the same for hearing on the merits.

9. The Duty Court directed that the application be served for hearing on 16 May 2018 and on the said date, the Court upon being satisfied that the application was served allowed the application, thus paving way for the hearing of the application filed in Court on 20 February 2018.

10. The grounds advanced in support of the application to set aside the order dismissing the Cause were that the Claimant was not served with the hearing notice issued by the Deputy Registrar on 8 March 2017 and therefore the failure to attend Court was not deliberate.

11. It was also contended that the Court file had been missing.

12. The Court has looked at the record and not found any affidavit of service or other note indicating that the hearing notice issued by the Deputy Registrar was served upon the parties.

13. The Court has also noted while preparing this ruling that the Cause is part heard before Onyango PJ and that the Claimant closed his case on 16 October 2014.

14. The Court will allow the application filed in Court on 20 February 2018 considering that there is no evidence a hearing notice was served, and further direct that the file be placed before Onyango PJ, before whom hearing had commenced for further directions.

15. No order as to costs.

Delivered, dated and signed in Nairobi on this 26th day of October 2018.

Radido Stephen

Judge

Appearances

For Claimant Ms. Wambugu instructed by W.G. Wambugu & Co. Advocates

For Respondent Ms. Mochama instructed by KTK Advocates

Court Assistant Salome