



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO. 1787 OF 2014

JOSPHAT GATHIACA KIARIECLAIMANT

VERSUS

NAKUMATT HOLDINGS LTD.....RESPONDENT

RULING

1. On 5 December 2017, the Claimant's advocates on record appeared before the Deputy Registrar for purposes of fixing a hearing date.
2. The Deputy Registry scheduled the hearing for 10 May 2018, and the Claimant was directed to serve a hearing notice.
3. When the Cause was called out for hearing on the scheduled date, both the Claimant and Respondent were absent.
4. Even their advocates on record were not in Court and the Court dismissed the Cause.
5. On 15 May 2018 the Claimant filed an application seeking orders
 1. **THAT** the order made by this Honourable Court on 10th May 2018 dismissing the suit for non-attendance and/or want of prosecution be set aside.
 2. **THAT** costs of this application be in the cause.
6. Although served with the application, the Respondent did not file any formal response in opposition to the application.
7. The application was heard on 27 June 2018.
8. In seeking to set aside the order dismissing the Cause, the Claimant's advocate indicated that the failure to attend Court on 10 May 2018 was due to inadvertent in that he was engaged in other matters, HCCC No. 843 of 2005, *Lifecare International Ltd v Zeenat Meghji & 2 Ors* and High Court Insolvency Cause No. 10 of 2017, *In the matter of Nakumatt Holdings Ltd*.
9. The Claimant's advocate urged that it was in the interest of justice to have the Cause heard on the merits and that in any case, the Cause could not have proceeded by virtue of a ruling of the High Court on 22 January 2018 placing the Respondent under an Administrator.
10. The Court has considered the record and all material placed before it.
11. There has been no attempt to explain why the Claimant (as apart from the advocate) was not in Court when the Cause was coming up for hearing. Even if there was a need to adjourn the hearing, it was incumbent upon the Claimant to be in Court, for adjournments are granted upon the Court being provided with sufficient reasons.
12. One of the matters the Claimant's advocate indicated he was attending to was before the Subordinate Court. That this Court takes precedence over the Subordinate Court need no reiterating.
13. In terms of hierarchy of the Courts, the Claimant should have made appropriate arrangements to have the Court informed about his engagements before the High Court as he was aware of the order of the suits in both the High Court and this Courts cause list.
14. In the view of this Court, the Claimant has not shown sufficient reason why the Court should exercise its discretion in his favour.

15. The application is dismissed with no order as to costs.

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

Radido Stephen

Judge

Appearances

For applicant Mr. Njoroge instructed by Philip Muoka & Co. Advocates

For Respondent Nyaberi & Co. Advocates

Court Assistant Stella