



**Khalicha v Blue Nile East Africa Limited (Cause 1651 of 2014)
[2018] KEELRC 2608 (KLR) (26 October 2018) (Ruling)**

Rashid Abdikhadir Khalicha v Blue Nile East Africa Limited [2018] eKLR

Neutral citation: [2018] KEELRC 2608 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1651 OF 2014
ON MAKAU, J
OCTOBER 26, 2018**

BETWEEN

RASHID ABDIKHADIR KHALICHA CLAIMANT

AND

BLUE NILE EAST AFRICA LIMITED RESPONDENT

RULING

Introduction

1. The application before me is the Notice of Motion dated 28.4.2017 and it is brought by the claimant seeking for the reinstatement of his suit, which was dismissed for want of prosecution 5.4.2017. The motion is supported by the Affidavit sworn by the claimant's counsel Mr. Hassan Nunow Lakicha on 28.4.2017. The main ground for the application is that neither the claimant nor his Advocate on record were served with the Notice to show cause before the suit was dismissed on 5.4.2017. That the claimant is still desirous to prosecute his case and unless the application is granted, he will suffer grave injustice and substantial loss.
2. The application is opposed by the respondent through the Replying Affidavit sworn by Martha Wenene, Advocate for the Respondent on 7.7.2017. She contended that the dismissal of the suit on 5.4.2017 was justified because since the filing of the suit the claimant failed to take any action towards fixing the suit for hearing. She further contended that the court was issuing dates for hearing cases filed between 2010 and 2014. She prayed for the notice of motion to be dismissed with costs.

Analysis and Determination

3. The issue for determination is whether the Application has merits. I have carefully perused the court record and found that the claimant indeed did nothing towards setting down the suit for hearing since



it was filed 23.9.2014. That over two years, the file laid idle at the registry only gathering dust. The claimant alleges that he was waiting for the court to issue notice calling parties to fix hearing dates for 2014 matters. That is a lame excuse which lacks merits. The claimant had a duty to act diligently towards setting down the suit for hearing as soon as the pleadings closed.

4. The foregoing notwithstanding, I have noted that there is no evidence on record to prove that the claimant was served with either Notice to show cause why the suit should not be dismissed for want of prosecution or a hearing Notice for that matter and failed to attend court on 5.4.2017. It is trite that the purpose of the court is to do justice and not to condemn litigants unfairly. In this case, the court dismissed the claimants suit without giving him an opportunity to appear before it and show cause why the suit should not be dismissed for want of prosecution. Consequently, for the reason that the claimant was not served with a Notice to appear in court on 5.4.2017 when the suit was dismissed, I proceed to allow the application as prayed. Costs shall be in the cause.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 26TH DAY OF OCTOBER, 2018

ONESMUS N. MAKAU

JUDGE

