



**REPUBLIC OF KENYA**

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

**CAUSE NO. 295 OF 2013**

*(Before Hon. Justice Mathews N. Nduma)*

**SAMUEL OMONDI ADERA.....CLAIMANT**

**VERSUS**

**SUKARI INDUSTRIES LIMITED.....RESPONDENT**

**R U L I N G**

1. The court has considered the application to set aside the order of the court by Maureen Onyango J. to dismiss the suit for want of prosecution issued on 16<sup>th</sup> October, 2017. The court has considered the grounds of opposition filed by the Respondent on 19<sup>th</sup> July, 2018 and the written submissions by the party and is satisfied that the delay to prosecute the matter was wholly caused by the advocate of the Applicant and not by the Applicant himself.

2. The court has taken into account the overriding objective of giving a fair hearing to all persons in terms of Article 159 of the constitution and the general principle not to visit the mistakes of an advocate on the client.

3. Accordingly, the court exercises, its discretion to set aside the order of the court to dismiss the matter for want of prosecution and has reinstated the suit on the following terms:-

(i) The suit is to be set down for hearing on the date of this ruling on priority basis.

(ii) The Claimant is put on terms to prosecute the matter on the first date to be given. Any default on the part of the Claimant would lead to dismissal of the suit.

(iii) Costs in the cause.

**Dated and Signed in Kisumu this 11<sup>th</sup> day of October, 2018**

**Mathews N. Nduma**

**Judge**

**Appearances**

Claimant in Person

Ogejo, Olendo & Co. Advocates for the Respondent

Chrispo – Court Clerk