



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO. 2045 OF 2013

HENRY WAMALWA KAKAL.....CLAIMANT

v

NDUGU TRANSPORT CO. LTD.....RESPONDENT

RULING

1. For determination is an application dated 30 July 2018 seeking orders

1. THAT this Honourable Court be pleased to review and/or set aside the order of Honourable James Rika made on 22nd April, 2016 dismissing this claim for want of prosecution and the file be closed.

2. THAT this Honourable Court be pleased to reopen the file herein and this Claim be reinstated for hearing and be determined on merit.

3. THAT the costs of this application be costs in the cause.

2. The grounds advanced by the applicant in support of the application include that the failure to attend Court on 22 April 2016 was not deliberate; that the then advocate on record failed to inform him of the hearing date; that the mistake of his advocate should not be visited upon him and that the Respondent stood to suffer no prejudice were the orders sought be granted.

3. In opposing the application, the Respondent contended through an affidavit sworn by its Managing Director that the applicant had not demonstrated sufficient reasons why he did not attend Court for the hearing; that there was no explanation for the delay of 2 years in presenting the instant application; that the applicant had failed to follow up on the case with his then advocates and that the application was not merited.

4. The Court has considered the application, the grounds and supporting affidavit, the replying affidavit in opposition and the oral submissions.

5. It is instructive that the applicant has projected the failure to attend Court on his erstwhile advocate on record and that the said firm of advocates has signed a consent to allow the current advocates to come on record but failed to swear/file any affidavit as to why they did not attend Court on 22 April 2016.

6. In the view of the Court, that disclosure was not only material but relevant in order for the Court to competently exercise its discretion.

7. Further, there was no explanation why it took 2 years to move the Court after the dismissal of the Cause. Without any explanation, it is only logical to conclude that the delay was inordinate.

8. In the view of the Court, the applicant has exhibited casualness in dealing with the dismissal of the Cause.

9. As it is, the Court is not satisfied by the reasons advanced by the applicant, and considering that the failure to communicate with the applicant is not just a mistake but borders on professional negligence, the applicant is not without other options.

10. The application is declined and is dismissed with no order as to costs.

Delivered, dated and signed in Nairobi on this 30th day of November 2018.

Radido Stephen

Judge

Appearances

For applicant Ms. Juma instructed by Marisio Luchivia & Co. Advocates

For Respondent Mr. Mukuha instructed by Menezes & Partners Advocates

Court Assistant Lindsey