



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE NO. 1438 OF 2013

FRANCIS KARIMI MUGO.....CLAIMANT

v

ATHI RIVER WATER SERVICES BOARD.....RESPONDENT

RULING

1. Francis Karimi Mugo (Claimant) instituted legal proceedings against Athi Water Services Board (Respondent) on 5 September 2013 alleging unfair termination of employment and breach of contract.
2. When the Cause came up for hearing on 22 April 2016 during the service week, the Court established that *Notice of Summons* had not been served upon the Respondent and it ordered the issuance and service of fresh Summons by Claimant upon the Respondent.
3. Upon service, Kipkenda & Co. Advocates filed a *Notice of Appointment of Advocate* on 4 September 2017 and a Memorandum of Response on 14 November 2017.
4. On 13 March 2018, the Respondent raised a preliminary objection contending that the Court did not have jurisdiction to entertain the Cause. The objection was dismissed on 10 May 2018 because the Respondent failed to appear to prosecute it.
5. On 27 June 2018, the Claimant filed a motion seeking the transfer of the Cause to the High Court on the ground that there was no employer/employee relationship between the parties.
6. The application for transfer was heard on 10 July 2018, and the Court declined to order the transfer sought as the cause of action was anchored on unfair termination of employment/breach of contract.
7. On 22 October 2018, the Cause came up for directions and the Court directed the Claimant to file and serve witness statements and documents before 2 November 2018, and the Respondent to file and serve its witness statements and documents before 9 November 2018.
8. The Court scheduled the hearing for 22 November 2018.
9. The Claimant did not comply with the order as to filing and service of witness statements and documents.
10. On 16 November 2018, the Respondent filed an application seeking an order dismissing the Cause on the ground that the Claimant had filed another suit being Nairobi Cause No. 1437 of 2013, *Francis Karimi Mugo v Nairobi Water & Sewerage Co. Ltd.*
11. When the Cause was called out for hearing on 22 November 2018, the Court directed that the issues raised in the application be taken up during the hearing of the Cause and scheduled the hearing at 1200 hours.
12. At 1233 hours, Mr. Mtange sought an adjournment and the main reason advanced was that he had not been able to communicate with the Claimant to sign a witness statement/attend Court. He also informed the Court that the Claimant was not taking his phone calls.
13. Mr. Mtange further sought to be allowed 7 days to attempt to reach the Claimant and on failure thereto, apply to cease from acting.
14. The Respondent opposed the application for adjournment on the grounds that the Cause had taken long to be determined, the Claimant had not complied with orders of 22 October 2018 and that the Claimant had frustrated previous hearings.
15. The record shows that it took the Claimant about 4 years and a Court order to serve Notice of Summons and the pleadings upon the Respondent. No explanation was tendered for that inordinate delay.

16. A case at all times belong to the litigant and the advocate on record serves as an agent. It is inconceivable that a litigant would not follow up with the advocate on the progress of a case for over 5 years.
17. Such conduct can only be a sign of disinterest in the litigation.
18. The Court cannot force a litigant to prosecute his or her case. What the Court can do is to order such a suit to be dismissed. A dismissal in such a case is not because of the conduct of the advocate on record.
19. Before concluding, it is not lost on the Court that the Claimant lodged another case based on the same facts against an entity operating under the statutory regulation of the Respondent and judgment was delivered on 26 October 2018.
20. Litigants should not play roulette with the Court. Such conduct amounts to abuse of court process.
21. In the view of the Court, the Claimant has exhibited unparalleled casualness in prosecution of the Cause and the adjournment sought on 22 November 2018 is declined.
22. And because the Claimant was not in Court, the Court orders the Cause dismissed with costs to the Respondent.

Delivered, dated and signed in Nairobi on this 23rd day of November 2018.

Radido Stephen

Judge

Appearances

For Claimant Mr. Mtange instructed by P.K. Mtange & Co. Advocates

For Respondent Mr. Odoyo instructed by Kipkenda & Co. Advocates

Court Assistant Lindsey