



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO. 465 OF 2012

(Originally Nairobi High Court Civil Case No. 215 of 2009)

JAMES KIMONYE

CLAIMANT

v

KENYA MEAT COMMISSION

RESPONDENT

RULING

1. James Kimonye (applicant) moved the High Court in 2009 against Kenya Meat Commission (Respondent) alleging breach of employment contract.
2. On 2 June 2015, the High Court issued an order directing that the suit be transferred to this Court for hearing and determination.
3. On 22 June 2016, the High Court dismissed the Cause herein under Order 17 Rule 2(1) of the Civil Procedure Rules when the Claimant failed to show cause, and this prompted the applicant to move this Court on 29 August 2018 seeking orders
 1. **THAT** the Honourable Court be pleased to set aside the orders made on 22nd June, 2016 dismissing this suit for want of prosecution.
 2. **THAT** the Honourable Court be pleased to re-instate this suit for hearing and final determination.
 3. **THAT** the costs of this application be provided for.
4. Upon service of the application, the Respondent through Josephine Kyalo filed a replying affidavit in opposition to the application, and the Court took arguments on 18 October 2018.
5. The Court has considered the application, the grounds and affidavit in support thereof, the replying affidavit in opposition, the submissions and case law placed before it and come to the conclusion that the application should be allowed on the sole ground that when the High Court dismissed the Cause on 22 June 2016, it had no such jurisdiction, the subject suit having been transferred to this Court.
6. The mere fact that the Deputy Registrar had not performed the administrative act of sending the file over to her counterpart in this Court could not clothe the High Court with jurisdiction to take such a drastic step of dismissing the suit.
7. The Court has also not been able to find any evidence on file that a *Notice to Show Cause* was served on any of the parties before the dismissal on 22 June 2016.
8. The Court allows the application dated 29 August 2018 and further directs that
 - (a) The Respondent to file and serve its witness statements and documents before 30 November 2018.
 - (b) Claimant to forward to Respondent Proposed Issues before 30 November 2018.
 - (c) If Issues are not agreed/settled by 7 December 2018, the Issues as proposed by the Claimant to be filed as trial Issues.
9. Each party to bear own costs of the application.

10. Considering the age of the Cause, a convenient mention date will be given after this Ruling to give further directions

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

Radido Stephen

Judge

Appearances

For applicant Mr. Njeru instructed by Muciimi Mbaka & Co. Advocates

For Respondent Ms. Kyalo instructed by Kilukumi & Co. Advocates

Court Assistant Mambo