



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA**  
**AT NAKURU**  
**CAUSE NO.191 OF 2016**  
**[Formerly Eldoret HCCC No.124 of 2016]**  
**ABSOLOM JAYUGA NGILIMANI & OTHERS.....CLAIMANTS**  
**VERSUS**  
**RIFT VALLEY TEXTILES LIMITED [under receivership].....RESPONDENT**  
**RULING**

The claimants through application and Notice of Motion dated 21<sup>st</sup> August, 2017 are seeking for orders that;

*The court be pleased to set aside the orders given on 22.06.2017 dismissing the claim.*

On the grounds that the circumstances leading to non-prosecution and information on the dismissal of the claim were beyond the claimants' advocate control and they are still interested in pursuing this matter. There shall be great prejudice and loss if the application is not allowed reinstating the suit.

The application is supported by the affidavit of Absolom Jayuga Ngilimani and who avers that he is one of the claimants and learnt that this suit was dismissed on 22<sup>nd</sup> June, 2017 but the claimants are still interested in the matter.

The file was transferred from Eldoret High Court to this court on 10<sup>th</sup> May, 2016 and the advocate wrote a letter to the court seeking information with regard to the new cause number on 15<sup>th</sup> August, 2016.

The claimants' advocate informed the respondent of the new cause number and agreed to attend and take a hearing date on 12<sup>th</sup> January, 2017 and agreed for the 9<sup>th</sup> March, 2017 and on which date there was intimation the file will be sent back to Eldoret as the court had a sub-registry established. The parties were not aware that the matter had been listed for dismissal on a subsequent date and hence the reason for non-attendance.

There is no reply by the respondent.

The claimants filed written submissions.

As noted by the claimants, the High Court at Eldoret directed on 10<sup>th</sup> May, 2016 for the file to be heard by the court at Nakuru and thus moved the file. A date for mention was also allocated for the 15<sup>th</sup> June, 2016.

On the due date the parties did not attend.

A new date was allocated for the 27<sup>th</sup> April, 2017. Both parties remained absent.

On this basis the court directed the Deputy Registrar to issue dismissal notice to the parties to attend court on 28<sup>th</sup> April, 2017. The claimant attended and noted the show cause notice had not been served. The court directed for the issuance of a fresh show cause notice for 22<sup>nd</sup> June, 2017.

On the due date and despite the claimant's advocate being present in court on 28<sup>th</sup> April, 2017 there was no attendance. No reason has been

given by the claimants as to why there was no court attendance as directed in their presence on 28<sup>th</sup> April, 2017.

The court, on good basis and noting the absence of the parties dismissed the suit on 22<sup>nd</sup> June 2017.

There was sufficient notice, the claimants were well represented before the court and the orders issued on 22<sup>nd</sup> June, 2017 are valid and lawful. The absence of the claimants and their advocate in court as directed has not been addressed. In the affidavit of Mr Ngilimani he avers that;

*On 9.3.2017 there was intimation that the case will be transferred back to Eldoret and therefore no one from the advocate's office travelled to Nakuru.*

The source of such misleading information is not disclosed.

In any event after the 9<sup>th</sup> March, 2017 the claimants advocate attended court on 28<sup>th</sup> April, 2017 and in his presence the court directed attendance on 22<sup>nd</sup> June, 2017 for the parties to show cause why the suit should not be dismissed. This attendance is well confirmed by Mr Ngilimani in his paragraph 15 of the Supporting Affidavit.

Even in a case where the advocate attending court on 28<sup>th</sup> April, 2017 misinformed the claimant's advocate as to the date of attendance for 26<sup>th</sup> July, 2017 as averred by Mr Ngilimani at paragraph 16 of the Supporting Affidavit, upon realisation that such date was communicated between advocates in error, no action was taken on such date and for over 30 days, this application was not filed.

There is no affidavit by the advocate, Mr Magatta attending on 28<sup>th</sup> April, 2017 to confirm the averments now made by Mr Ngilimani in his affidavit. Where there was diligence and keenness to have the matter heard, the claimants ought to have acted with vigilance. Where such advocate, Mr Magatta accepted to hold brief for the claimants' advocate and note by error what transpired in court and in his presence, then great reasons demanded that such advocate be brought to account.

Mr Ngilimani as the claimant also avers at his paragraph 15 that he was in court on this particular day, the 28<sup>th</sup> April, 2017. The orders of the court cannot have escaped both advocate and counsel.

Ultimately, there was notice issued to the parties to attend to show cause why the matter should not be dismissed, there was no attendance and the court on good basis dismissed the suit.

**Accordingly, the orders issued on 22<sup>nd</sup> June, 2017 are lawful and the court finds no basis to interfere with the same. Application dated 21<sup>st</sup> August, 2017 is hereby dismissed. No orders to costs.**

Dated and delivered in open court at Nakuru this 22<sup>nd</sup> of November, 2018.

**M. MBARU JUDGE**

M. In the presence of:.....