



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO. 1418 OF 2014

JOSEPH KILONZO.....CLAIMANT

v

SHREEJI ENTERPRISES LIMITED.....RESPONDENT

RULING

1. On 30 October 2017 the advocates on record in this Cause appeared before the Deputy Registrar and had the Cause scheduled for hearing on 5 July 2018.
2. When the Cause was called out for hearing on the scheduled date, both parties indicated that they were ready to proceed with the hearing, and the Court directed that the hearing commence at 1200 hours.
3. At 1157 hours, Mr. Mari for the Claimant sought an adjournment, and the reason he gave was that the Claimant, a long distance truck driver had got a break down while on his way back from Busia.
4. The Respondent, having been kept waiting naturally opposed the application for adjournment and among the reasons he advanced were that this was not the first application for adjournment by the Claimant and that 2 *Notices to Show Cause* why the suit should not be dismissed had been issued previously.
5. The Respondent further indicated that there was another suit, Milimani Chief Magistrate's Court Civil Case No. 4738 of 2017 based on the same cause of action (unfair termination of employment).
6. Considering the circumstances obtaining, the Court directed the Claimant to produce evidence from his employer about the vehicle breakdown, and mention was fixed for 13 July 2018.
7. On 13 July 2018, Mr. Mari informed the Court that he had not managed to secure a letter from the Claimant's employer about the breakdown and sought that summons be issued against the Human Resources Manager.
8. Mr. Ondari for the Respondent however informed the Court that he had talked with the Claimant's Human Resources Manager and he had informed him that the Claimant had taken 1 month leave in order to among other things, attend the hearing.
9. The Court directed that summons issue to the Human Resources Manager, and the Manager Dickson Wafula appeared in Court on 20 July 2018 and was examined by the parties. The Claimant was also examined on oath.
10. The Manager stated under oath that the Claimant worked with *Metro Logistics Ltd* as a truck driver and that he did not inform him (Manager) that the Cause was coming up for hearing on 5 July 2018; that the Claimant had requested him on 9 July 2018 to write a letter indicating that he had travelled to Burundi but when he logged into the system, he established that the Claimant had not travelled to Burundi but had gone for a delivery in Ahero between 4 July 2018 and 6 July 2018 and that the Claimant did not inform him of any vehicle breakdown. He also referred to the Claimant's delivery book.
11. On his part, the Claimant stated that after making a delivery in Ahero he started the journey back to Nairobi on 5 July 2018, but he had brake problems around Mai Mahiu. He confirmed going to the Human Resources Manager to ask for a *letter*.
12. When cross examined by the Respondent, the Claimant admitted that he did not inform or seek the employer's permission to attend Court hearing on 5 July 2018, and that his advocate had written a letter to the employer indicating that he was travelling back from Burundi and that he left Ahero at about 5.00am on 5 July 2018. The Claimant was shown print outs of the movement of the truck he was driving.
13. The Court has considered the addresses by the advocates when the Claimant was seeking adjournment on 5 July 2018, and what emerged

out of the examinations under oath on 20 July 2018.

14. The Claimant had spoken with his advocate before the hearing. The information disclosed to the Court that the Claimant had travelled to Burundi while seeking adjournment was not truthful, and did not reflect what emerged during the examination under oath.

15. An example is the disclosure that the Claimant was travelling from Busia. That was not true. Further, in the Claimant's advocate letter to the employer, it was indicated that the Claimant had travelled to Burundi on work. That too turned out to be incorrect.

16. The Court can therefore conclude that the Claimant was being dishonest when seeking adjournment on 5 July 2018. No Court of law should entertain such dishonesty.

17. The Court has also looked at the record. There are 2 *Notices to Show Cause* why the suit should not be dismissed for want of prosecution.

18. The Notices suggest a Claimant and advocate who have not been diligent. There is even no explanation why the Claimant had not made arrangements to attend the hearing on 5 July 2018, when the hearing date had been scheduled about 7 months in advance.

19. Arising from the above, the Court has no option but to decline the adjournment which was sought on 5 July 2018 *ex post facto* and also to dismiss the Cause for want of prosecution and misrepresentations made to Court.

20. Respondent to have costs.

Delivered, dated and signed in Nairobi on this 16th day of November 2018.

Radido Stephen

Judge

Appearances

For Claimant Mr. Mari instructed by Wachira Ndungu & Co. Advocates

For Respondent Mr. Ondari instructed by Oyatta & Associates

Court Assistant Lindsey