



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO. 994 OF 2014

JOHN MUCHUI MUNG'ATHIA..... CLAIMANT

v

SHENGLI ENGINEERING CONSTRUCTION

(GROUP) CO LTD..... RESPONDENT

RULING

1. On 29 January 2018, the Deputy Registrar in the presence of the Claimant's advocate fixed the Cause for hearing on 16 April 2018. The Claimant was directed to serve a hearing notice.
2. When the Cause was called out for hearing on the scheduled date, none of the parties (and advocates were in Court) and the Court dismissed the Cause.
3. On 20 April 2018, the Claimant filed an application seeking orders
 1. THAT the Honourable Court be pleased to set aside its order of 16th April 2018 dismissing this case for non attendance and reinstate the suit for hearing on the merits.
 2. THAT this Honourable Court be pleased to grant any other order suitable in the circumstances.
 3. That the costs of this application be provided for.
4. Although the application was served upon the Respondent, it did not file any response and the Court allowed the hearing to proceed on 3 July 2018.
5. The reasons given by the Claimant for failing to attend Court were that the Clerk who took the hearing date made an entry in the diary under the wrong name and that this Cause was entered in the diary as coming up for hearing on 17 April 2018; that the Claimant was innocent and should not suffer prejudice and that the Court had the power to set aside the dismissal order.
6. The record indicates that the hearing date was taken in the presence of Mr. Mwangi holding brief for Mr. Onindo for the Claimant.
7. The Claimant did not disclose whether Mr. Mwangi was a Clerk or an Advocate. The Court can presume that he is an advocate, and therefore the assertion that an unnamed Clerk made a wrong entry in the diary does not appear satisfactory. There is no affidavit from the advocate.
8. And if indeed the Clerk had entered the hearing date as 17 April 2018, there was no explanation why no hearing notice for this latter day was not served upon the Respondent.
9. The failure to demonstrate that a hearing notice for 17 April 2018 as opposed to 16 April 2018 was served leads the Court to the view that the reason advanced by the Claimant lacks bona fides.
10. A similar notice or communication should have gone to the Claimant.
11. The Court notes from the record that a *Notice to Show Cause* why the suit should not be dismissed had been issued on 20 September 2017.

12. When the Notice came up for hearing, Mr. Onindo informed the Court that the Claimant had debriefed the firm and taken away the file in May 2017.

13. The Court then directed that a formal application to cease from acting be filed but despite filing the application and being directed twice to serve the application, there is nothing on record to suggest it was served.

14. On 18 December 2017, Mr. Onindo informed the Court that he had agreed with the Claimant to continue representing him.

15. The Court, in consideration of the above comes to the conclusion that the Claimant is not deserving of its positive exercise of its discretionary power.

16. The application is dismissed with no order as to costs.

Delivered, dated and signed in Nairobi on this 2nd day of November 2018.

Radido Stephen

Judge

Appearances

For Claimant Onindo Onindo & Associates

Respondent did not enter appearance

Court Assistant Lindsey