



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU

CAUSE NO. 198 OF 2017

(Before Hon. Justice Mathews N. Nduma)

STEPHEN MAENYA OGUTU.....CLAIMANT

VERSUS

THE GREAT LAKES HOTEL LIMITEDRESPONDENT

R U L I N G

1. Application dated 5th July, 2018 seeks to set aside an order of the court deeming the Claimant's case as closed before the Claimant was cross examined by the Respondent and also deeming the Respondent's case as closed.
2. The Applicant prays that the case be re-opened and Respondent be allowed to cross examine the Claimant and also present a defence witness.
3. The application is on the grounds that Mr. Abira was in court in the morning on the day of the hearing but was late to come back to court when the matter proceeded at 1.20 pm.
4. By the time Mr. Abira came back to court, the court had concluded the hearing and risen.
5. The application is opposed vide a replying affidavit of Oliver Owaka Onyango advocate for the Claimant/Respondent stating that both counsels indicated on 5th July, 2018 that they were ready to proceed with the hearing of the suit. That the court allocated the hearing at exactly 1.30 pm. That Mr. Okwako telephoned Mr. Abira at 1.20 pm and reminded him to be in court at 1.30 pm. The Applicant's counsel failed to attend the hearing and the hearing proceeded in the absence of Mr. Abira for the Respondent. The Claimant/Respondent prays that the suit be dismissed with costs.

Determination

6. The conduct by Mr. Abira for the Respondent is what is defeating the overriding objective of courts to hear and determine suits timeously. The court takes judicial notice this kind of conduct is contributing to the building of back log in our courts.
7. Mr. Abira has not advanced any reasonable ground why he failed to turn up for the hearing despite that time had been allocated at his own behest in the morning.
8. The advocate bears responsibility for the happenings of that day and dictates of justice demand that the Claimant be entitled to expedient and fair justice not hindered by untoward conduct by officers of the court.
9. The court finds no reason to set aside the proceedings in this matter. The application is dismissed with costs.

Dated, Delivered and Signed in Kisumu this 20th day of December, 2018

Mathews N. Nduma

Judge

Appearances

Mr. Abira for Respondent/Applicant

Mr. Owaka for Claimant /Respondent

Chrispo – Court Clerk