



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
CAUSE NO. 294 OF 2014

GILBERT WAFULA KAIKA.....CLAIMANT

VERSUS

FARMERS CHOICE LIMITED.....RESPONDENT

RULING

1. Gilbert Wafula Kaika (Claimant) alleges that Farmers Choice Limited (Respondent) unfairly terminated his employment through a letter dated 15 October 2013. He also contends that he was underpaid. For the breaches, the Claimant seeks a total of Kshs 612,678/-.
2. The Respondent on its part asserts that the termination of the Claimant's employment was lawful and was after a disciplinary hearing, and that all terminal dues were paid and the Claimant discharged it.
3. On 18 December 2015, the Cause was fixed for hearing on 25 October 2016. The scheduling was in the presence of Ms. Mora holding brief for Mr. Kirwa for the Claimant and Mr. Kipkoech holding brief for Mr. Murimi for the Respondent.
4. When the Cause was called out for hearing on 25 October 2016, the Claimant and his advocate were not present and Mr. Muchela for the Respondent successfully applied to have the Cause dismissed.
5. The Claimant now seeks that the order of dismissal of the Cause be set aside.
6. The reasons advanced by the Claimant for seeking the order are that there was a misdiarisation of the hearing date (26 October 2016 instead of 25 October 2016) and that the error was a genuine mistake.
7. The Respondent in opposing the application contends that the Claimant was not vigilant in the management of his case.
8. During oral submissions, the Claimant urged that the order sought was discretionary, while the Respondent submitted that the both the Claimant and advocate could not have been mistaken as to the hearing date.
9. The Respondent further submitted that the Claimant had not sworn any affidavit to suggest that he also understood the hearing was on 26 October 2016 as opposed to 25 October 2016.
10. This Court has time without number, in applications such as this seeking setting aside of dismissal orders, observed that the party seeking the exercise of the court's discretion must make frank and full disclosure of the circumstances which led to the failure to attend court.

