



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAIROBI
CAUSE NO. 541 OF 2012
PATRICK OWINO ODAWA.....CLAIMANT
VERSUS
ALLPARK INDUSTRIES LIMITED.....RESPONDENT

Mr. Agina for claimant/applicant

M/S Adioloyr for respondent

RULING

1. This is an application to set aside the decision of Marete J. given on 12th December 2012 dismissing this suit for non-attendance. The suit was filed on 2nd April 2012. The suit was responded to on 18th June 2012.
2. On 29th May 2012, the suit was set for hearing by Hon. Madzayo J. on 12th November 2012 at 10 a.m. in the presence of Mr. Aketch for claimant and Mr. Malonza for respondent.
3. On the 12th November 2012, the matter was listed for hearing before Justice D. K. Marete. Both parties did not appear and the suit was dismissed for want of prosecution.
4. The application to set aside the decision dismissing the claim and reinstate the same was filed on 29th January 2013, two months after the suit was dismissed. However, the same has taken many years to be heard and determined.
5. Counsel for the claimant, Mr. Agina states that on the 12th December 2012, when the matter was dismissed the claimant was at the High Court under the misunderstanding that all Industrial Court Judges were sitting there. It later dawned on counsel that the matter was listed before D. K. Marete J. at NSSF Building.
6. The court takes judicial notice that this was the transition period for the newly established Employment and Labour Relations Court and the confusion raised by counsel for the claimant, Mr. Agina is understandable.
7. The court should endeavor to accord parties a fair hearing before dismissing their suits and only in exceptional circumstances should the hearing be denied.

8. In the circumstances of this case, the application is allowed, the decision dismissing the suit is set aside and the matter is reinstated.

9. The same will be granted a hearing date on priority basis given its age.

10. Costs in the cause.

Dated and Signed at Nairobi this 18th day of August, 2017.

MATHEWS NDERI NDUMA

PRINCIPAL JUDGE

Dated, Delivered and Signed at Nairobi this 18th day of August, 2017.

JORAM NELSON ABUODHA

JUDGE

Delivered in the presence of:

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