



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**

**CAUSE NO. 795 OF 2010**

**TOM MABYA LUSENO.....CLAIMANT**

*VERSUS*

**MARA WEST CAMP.....RESPONDENT**

Mr. Nyandieka for respondent/applicant

Mr. Guserwa for claimant/respondent

**RULING**

1. Justice delayed is justice denied.
2. The claimant closed his case on 26<sup>th</sup> May 2015 and the defence was not ready to proceed with the defence case on the day. The matter was set down for hearing on 28<sup>th</sup> October 2015.
3. On 28<sup>th</sup> October 2015 the respondent sought adjournment on the basis that a witness missed his flight yet the respondent wished to call two witnesses. The matter was set down for hearing on 1<sup>st</sup> February 2017.
4. On 1<sup>st</sup> February 2017, the respondent sought adjournment on the basis that counsel for the respondent Mr. Nyandieka had misdiarised the matter. The respondent's advocate was served on 16<sup>th</sup> December 2016 having failed to come to take a hearing date.
5. The court fails to understand how the counsel having been served with a hearing notice of 1<sup>st</sup> February 2017, misdiarised the matter, yet he sent someone else to hold his brief without any explanation as to his whereabouts on the day.
6. The application for adjournment was opposed by Advocate Guserwa for the claimant and the court having considered all the circumstances of the case, refused the adjournment and deemed the defence case closed.
7. This application was filed on 26<sup>th</sup> May 2017, more than three months from the date the defence case was closed and after the claimant had filed its final submissions. This in the court's view amounts to inordinate delay.
8. The respondent has not advanced any new and cogent reason why the decision to close the defence case made on 1<sup>st</sup> February 2017 ought to be set aside by this court.
9. The right to a fair hearing cuts both ways and includes the right of a claimant to have his matter heard and determined expeditiously.
10. The respondent was indolent and this court of equity will not come to its aid.
11. Accordingly, the application is dismissed with costs and matter will proceed to judgment.

**Dated and delivered at Nairobi this 4<sup>th</sup> day of August, 2017**

**MATHEWS NDERI NDUMA**

**PRINCIPAL JUDGE**