



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI

CAUSE NO.725 OF 2014

SILAS OKOMECLAIMANT

VERSUS

PANESARS KENYA LIMITEDRESPONDENT

RULING

The claimant, by application dated 29th June, 2017 is seeking that the orders of 6th April, 2017 be set aside and that the suit be reinstated and the same be heard on merit.

The application is supported by the Affidavit of Kabue Thumi Advocate and on the grounds that the claim herein was dismissed for want of prosecution on 6th April, 2017. The claimant proceeded to list the matter for mention on 7th March, 2017 but the file could not be traced and the registry informed the claimant that all matters for 2014 including this one would be listed and issued fresh dates. The notice to show cause was not served upon the claimant or his advocate.

On 29th June, 2017 the claimant tried to have the matter listed for formal proof and learnt that it had been dismissed. The claimant is willing to prosecute the matter given the chance and where the orders are set aside and the suit reinstated.

In reply, the respondent filed Replying Affidavit sworn by Catherine Mwangi, advocate for the respondent and who avers that the application is bad in law and should be dismissed. The claimant had not made any effort to set this suit heard since filing it in 2014 until the same was dismissed by the court upon show cause for want of prosecution. There is no evidence that on 7th March, 2017 the claimant made any efforts to have the matter listed for mention. There have been 3 years of inaction and the application is not justified.

Both parties made their oral submissions in court. On 8th March, the court issued a show cause notice to the parties to attend court on 6th April, 2017 to give reasons why the suit should not be dismissed for want of prosecution. Since the suit was filed 6th May, 2014 the claimant had taken no action at all to have the matter prosecuted.

I note the show cause notice is sent to the claimant directly. He filed the claim in person.

On 29th May, 2014 the respondent entered appearance through the firm of Ibrahim, Issack & Company Advocates.

On 9th September, 2014 the claimant appointed his advocates to act for him and notice filed by M/S

Nyamu & Nyamu Co. Advocates.

On 9th December, 2015 the claimant filed Notice to Act in Person.

The Show Cause Notice by the Court dated 8th March, 2017 is sent to the claimant and the firm of M/S Nyamu & Nyamu Advocates. I take this to be an anomaly as such law firm has since been replaced by the claimant seeking to act in person. It is also apparent that the respondent as not issued with such notice and hence they were absent when the matter came up for show cause.

Application dated 29th June, 2017 is filed by the firm of Omas Omosa & Co. Advocates. There is no Notice of Appointment or a change by the claimant to cease acting in person and hence have advocates on record representing him.

By application of Rule 16 of the Employment and Labour Relations Court (Procedure) Rules, 2016 the court has power to dismiss any suit that is not prosecuted within one (1) year. Where the claimant thus failed to take action for 3 years to prosecute his case, the court was thus justified to issue the show cause notice.

The claimant does not state that the issued notice did not reach him. It was sent to his last known address of service herein. As such, where there was failure to show case and the claimant was not in attendance as directed, the dismissal of the suit followed the cause.

The application before court is thus filed by a stranger. The firm of **Omas Omosa & Co. Advocate having no Notice of Appointment** to act for the claimant cannot move the court as herein applied.

Accordingly, application dated 29th June, 2017 is hereby dismissed. Costs herein are awarded to the respondent.

Delivered in open court at Nairobi this 7th day of November, 2017.

M. MBARU JUDGE

In the presence of:

David Muturi & Nancy Bor – Court Assistants

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