



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU

CAUSE NO. 75 OF 2014

(ORIGINALLY NAKURU CMCC NO. 1063 OF 2003)

DAVID MURIUKI NGARE.....CLAIMANT

V

SPIN KNIT LIMITED.....RESPONDENT

RULING

1. David Muriuki Ngare (Claimant) sued Spin Knit Limited (Respondent) on 14 May 2003, and he alleged breach of employment contract. Over 12 years later, the Cause has not been determined.
2. On 7 May 2013, the parties fixed the suit for hearing on 23 August 2013. For reasons which are not clear on the file, the case did not proceed for hearing as scheduled but was fixed again for 1 November 2013.
3. On 1 November 2013, the hearing was adjourned at the request of the Respondent because it had not been served with a hearing notice in good time.
4. The next hearing was set for 21 March 2014, but on this date, the Claimant applied that it be transferred to this Court as it related to an employment contract.
5. When the Cause was mentioned before Ongaya J on 29 April 2014, he directed that it be mentioned on 29 May 2014 for directions. On this later day, the parties informed the Court that they were negotiating an out of court settlement, but no settlement was reached and on 30 June 2014, the Court fixed hearing for 4 December 2014.
6. When the Cause was called out for hearing before me on 4 December 2014, the parties informed me that they had reached settlement, but the Claimant was yet to be consulted. The Court therefore set the Cause for mention on 18 December 2014.
7. However, come 18 December 2014, the Claimant was not represented but the Respondent informed the Court that the Claimant had been paid. The Court directed the parties to file a written consent and mention was set for 6 February 2015 to confirm.
8. Instead of filing the consent, the Claimant sought a hearing date on 6 February 2015. The Court fixed the Cause for hearing on 18 March 2015, but it could not be reached and the hearing was rescheduled for 19 March 2015 but the hearing did not proceed as the Respondent sought an adjournment.
9. Ultimately, the hearing commenced afresh on 14 April 2015 when the Claimant's case was closed. The Respondent's case was to be taken on 20 April 2015, but the parties informed the Court that they were negotiating.
10. The Court fixed the Cause for mention on 24 April 2015 to confirm settlement but when the Cause was called out on this day, Mr. Karanja for the Claimant applied to withdraw from acting.
11. The Claimant sought time to look for an advocate and the Court granted 30 days to instruct another advocate. However, on 8 June 2015, the Claimant sought more time to instruct an advocate. The Court gave him 2 weeks. The Respondent's case was fixed for 23 November 2015.

12. Come 23 November 2015, the Claimant indicated that he had instructed Martin Kamwaro Advocate and that he required typed copies of proceedings. The proceedings were on record and the Respondent's case was fixed for hearing on 15 December 2015.
13. On 15 December 2015, the Respondent informed the Court it was ready for the hearing. The Claimant however was not ready because his advocate was before Court 8. The Court gave him time to go and call his advocate for the matter to proceed at 10.00am.
14. By 10.50am when the matter was called, neither the Claimant nor his advocate was in Court. The Respondent sought that the Cause be dismissed, hence this ruling.
15. The Cause has not been concluded because of the conduct of the Claimant. The Court has given him more than sufficient time to instruct an advocate but no notice of appointment of advocate has been filed.
16. Because it is in the interest of both Claimants and Respondents that litigation is concluded expeditiously, the Court directs that the Respondent's case will be taken whether the Claimant has or has not instructed an advocate on a date to be agreed immediately hereinafter.

Delivered, dated and signed in Nakuru on this 26th day of February 2016.

Radido Stephen

Judge

Appearances

Claimant in person

For Respondent Ms. Nasimiyu instructed by Mukite Musangi & Co. Advocates

Court Assistant Nixon