



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

CAUSE NO. 384 OF 2013

MICHAEL RUGARA WAMBUGU.....CLAIMANT

v

KENYA RED CROSS.....RESPONDENT

RULING

1. For determination is a motion dated 18 February 2016 by the Claimant seeking

1. THAT this Honourable Court be pleased to review its order made on 4th December 2014 and upon such review this cause be reinstated and the applicant allowed (sic) to prosecute this suit against the respondent.

2. THAT costs of this application be in the cause.

2. The history to the application is that on 3 June 2014, the Cause was fixed for hearing on 4 December 2014. The date was fixed in the presence of the parties legal counsels.

3. When the Cause was called out for hearing on 4 December 2014, the Claimant and his advocate were absent, while Mr. Orege was present for the Respondent.

4. Mr. Orege, in view of the absence of the Claimant and his legal counsel sought that the Cause be dismissed, an application which the Court granted.

5. The dismissal prompted the Claimant to file the instant application on 22 February 2016. The Respondent filed a replying affidavit on 22 March 2016.

6. The motion was taken on 26 April 2016.

7. The 2 main reasons advanced by the Claimant are that his advocate Mr. Githui was before Emukule J in a Succession Cause on 4 December 2014, and that this Cause had been stayed pending determination of a related criminal case, Nakuru Criminal Case No. 857 of 2013, *Republic v Michael R. Wambugu*, which case was only concluded on 30 October 2015.

8. The Respondent contended that over 1 year had elapsed from the dismissal of the Cause and therefore the application was an afterthought.

9. The Court has given due consideration to the rival positions advanced by the parties and the authorities relied on.

10. The Claimant has not exhibited any document to demonstrate that his advocate was appearing before Emukule J on 4 December 2014 as asserted in the supporting affidavit. Nothing would have been easier to do than exhibit a copy of the days cause list or extract of notes taken in the court file on that particular date.

11. There is also no explanation why the Claimant was not in Court in person considering that the Cause was coming up for hearing. He could as well have informed the Court of the other engagements of his counsel.

12. As to the contention that this Cause was stayed pending conclusion of the criminal trial of the Claimant, the same is not supported by the notes of Ongaya J who handled the matter before the dismissal.

13. The notes and directions taken by Ongaya J on 3 June 2014 are

The Court has considered the pending criminal case related to this matter. The criminal case is between *R v Wambugu* at Nakuru. Hearing is on going. 2 witnesses taken. In the circumstances, this matter will be heard on 4.12.2014 at 9am when it is anticipated that the criminal case will have been determined. Case heard one hour. Costs in the cause.

14. From the notes, there is no explicit order staying the hearing of the Cause.

15. Be that as it may, even if a stay were granted, that would not be an excuse or reason for a party and or legal counsel to fail to attend Court. For legal counsel, it is a professional duty to attend Court even during mentions and if unable to attend alternative arrangements for representation should be made.

16. It is also noteworthy that the Cause was dismissed on 4 December 2014 and the application to review the dismissal order was only presented to Court on 22 February 2016, some odd 14 months later.

17. The Claimant did not attempt to explain the delay and in the circumstances, the Court finds the delay inordinate and not meriting the Court exercising its discretion in his favour.

18. The upshot of the foregoing is that the Court finds no merit in the motion dated 18 February 2016 and orders that it be dismissed with no order as to costs.

Delivered, dated and signed in Nakuru on this 9th day of September 2016.

Radido Stephen

Judge

Appearances

For Claimant: Ms. Alwala instructed by Githui & Co. Advocates

For Respondent: Mr. Odhiambo instructed by Rodi Orege & Co. Advocates

Court Assistant: Nixon