



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
CAUSE NO. 19 OF 2016

PETER OCHOLI

CLAIMANT

v

CHAIRMAN, BOARD OF MANAGEMENT

AFRAHA HIGH SCHOOL

RESPONDENT

RULING

1. Peter Ocholi (Claimant) sued the Chairman, Board of Management of Afraha High School (Respondent) on 25 January 2016 and the main relief sought was payment of terminal benefits totalling Kshs 390,310/-.
2. The Respondent filed a Response on 20 April 2016 and one of the defences raised was that of *res judicata*.
3. The plea was taken up as a preliminary issue on 29 July 2016 and is the subject of this ruling.
4. The Court has given due consideration to the written submissions and authorities filed and relied on by the parties.
5. It is not in dispute that the Claimant had commenced other proceedings against the Respondent being, *Nakuru Cause No. 593 of 2014*.
6. That suit was dismissed for non-attendance after the issuance of a show cause to the Claimant to explain why the Cause could not be dismissed.
7. The Claimant made an attempt to have the Cause reinstated and in a ruling delivered on 15 May 2015, the application was dismissed.
8. Instead of letting the matter lie, the Claimant instituted the instant Cause which the Respondent now resists on the basis of *res judicata*.
9. Section 7 of the Civil Procedure Act delineates the confines of the doctrine of *res judicata* under our jurisdiction.
10. The cause of action being advanced by the Claimant was not determined on the merits. The Cause was dismissed for non-attendance after the issuance of a dismissal show cause.
11. In that respect, the plea of *res judicata* as raised by the Respondent is misplaced.

12. In the ruling delivered on 15 May 2015, the Court set out at paragraphs 7 to 12 the facts which led it to decline to exercise its discretion in favour of the Claimant to reinstate the Cause.

13. Some of those facts were that there was no explanation for the failure to attend Court by the advocate or the Claimant.

14. In the Court's view, allowing the instant Cause to proceed would mean that the Court is going back on the findings it made in the said ruling. It amounts to abuse of the court process.

15. It appears to the Court that the Claimant in taking the course of filing new suit was attempting to circumvent the Court's ruling through the easy way, and that ought not to be allowed.

16. The Court would therefore reach the conclusion that the present Cause is an abuse of the Court's process and order that it be dismissed with costs to the Respondent.

Delivered, dated and signed in Nakuru on this 7th day of October 2016.

Radido Stephen

Judge

Appearances

For Claimant Mr. Simiyu instructed by Simiyu & Co. Advocates

For Respondent Ms. Yebei instructed by Rodi, Orege & Co. Advocates

Court Assistant Nixon