



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAKURU

CAUSE NO. 168 OF 2013

(Originally Nairobi Cause No. 790 of 2012)

**KENYA UNION OF DOMESTIC, HOTELS, EDUCATIONAL
INSTITUTIONS, HOSPITALS & ALLIED WORKERS.....CLAIMANT**

v

TALAI SECONDARY SCHOOL.....RESPONDENT

RULING

1. On 9 October 2014, the parties herein informed the Court that they had reached a consent, and the Court directed that a written consent be filed. A mention was fixed for 14 October 2014 to confirm filing of the consent.
2. On 14 October 2014, the Respondent's advocate informed the Court that the consent had not been filed because the Respondent's Board had not met.
3. The Court therefore gave the parties up to 12 November 2014 to file the consent, but when the Cause was mentioned on this day, the parties disclosed that they had failed to agree and sought a hearing date.
4. The Court fixed the hearing for 21 January 2015, but when the Cause was called out, the Union sought an adjournment to enable it file an amended Memorandum of Claim, and also because the Industrial Relations Officer handling the Cause was bereaved.
5. The Court granted the request and also gave directions as to the filing of amended pleadings with hearing being scheduled for 5 May 2015.
6. Come 5 May 2015, the hearing could not proceed because the Union had served the amended Memorandum of Claim upon the Respondent only 24 April 2015, instead of before 10 February 2015 as directed by Court.
7. The Court admitted the amended Memorandum of Claim and gave the Respondent up to 19 May 2015 to file an amended Response. The Court also directed the parties to further explore out of court settlement.
8. Towards the end of 2015, the Court issued a general notice to litigants to appear in Court on set dates for purposes of taking convenient hearing dates/directions, and this Cause was set for mention on 9

November 2015.

9. None of the parties attended and the Court directed a dismissal notice to be issued with a return date of 10 December 2015.

10. According to the record, the Deputy Registrar of the Court issued a Notice to Show Cause why Suit should not be dismissed on 16 November 2015.

11. When the Cause was called out on 10 December 2015, none of the parties were in attendance and the Court dismissed the Cause.

12. On 14 July 2016, the firm of Wachira Wanjiru & Co. Advocates came on record for the Union and also filed the application, subject of this ruling, seeking that the order dismissing the Cause be reviewed and or set aside.

13. The Respondent filed a replying affidavit to the motion on 30 September 2016 and arguments were taken on 5 October 2016.

14. The Union's case is that it was not afforded an opportunity to be heard before the Cause was dismissed; that the show cause notice was not received; that parties have a right to be heard and that the application had been made without undue delay.

15. During oral submissions, the Union urged that the order sought was discretionary and that because of limitation, if the Cause was not reinstated, the Grievants stood to suffer irreparably. Case law was also cited.

16. The Respondent on its part contended that the Union had not been diligent enough and that the Union had declined to attend meetings to explore out of court settlement.

17. The Respondent also urged that the Court had properly exercised its discretion *suo moto* to dismiss the Cause, and that the application to set aside and/or review the order of dismissal had been brought after inordinate delay.

18. At the time the dismissal show cause notice was being issued, the Union was appearing on behalf of the Grievants through an Industrial Relations Officer (current advocate came on record at point of filing the instant application).

19. The show cause notice was addressed to the Union.

20. None of the officials of the Union have sworn an affidavit as to whether the show cause notice was received or not.

21. The Union's supporting affidavits are sworn by the Grievants and they state that they were advised by the current advocates on record that the notice was not received.

22. It is not disclosed how the advocate now on record came to know that the show cause notice was not received by the Union, or the identity of the union official who informed her that the notice was not received.

23. The depositions in the supporting affidavits therefore do not meet the threshold on disclosure of matters of information and in this regard the Court concludes that the Union has not demonstrated that the show cause notice was not served upon it.

24. It took the Union about 7 months to move Court after the order of dismissal.

25. A perusal of the 2 supporting affidavits do not clearly explain why the Union did not bother to

confirm from the registry of the Court the status of the Cause for that long.

26. Inordinate delay would be a matter to be determined on the peculiar facts or circumstances of each case. Depending on the circumstances, a delay of even one day may be inordinate while a delay of 7 months may not be inordinate.

27. In the present situation, the Union has not given sufficient or convincing reasons why it took it up to 7 months to establish the status of the Cause, and the Court also finds the delay here inordinate.

28. The upshot of the foregoing being that the Court declines to exercise its discretion in favour of the Union with the end result that the motion dated 12 July 2016 is dismissed with no order as to costs.

Delivered, dated and signed in Nakuru on this 11th day of November 2016.

Radido Stephen

Judge

Appearances

For Union Ms. Wachira instructed by Wachira Wanjiru & Co. Advocates

For Respondent Ms. Kiplagat instructed by Ledishah J.K Kittony & Co. Advocates

Court Assistant Nixon/Daisy