



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU

CAUSE NO. 362 OF 2013

ALEX SEMUTWA

CLAIMANT

v

KENYA SEED COMPANY LTD

RESPONDENT

RULING

1. On 6 June 2014, Ongaya J delivered judgment in which he granted a declaration that the termination of the Claimant's employment was unfair and ordered the Respondent to pay the Claimant Kshs 553,000/- and costs by 1 July 2014.
2. On 11 November 2014, the Claimant filed an application for review of the judgment on the basis that the Court had used an erroneous salary for purposes of assessing compensation for unfair termination and unpaid salaries.
3. The application was fixed for hearing on 9 December 2014, but on the said date the Claimant and his counsel were not in Court. The Respondent was represented by Ms. Kahonge.
4. Because of the non-attendance, the Court dismissed the application with costs to the Respondent.
5. On 8 January 2015, the Claimant filed a motion seeking orders that the application for review filed in Court on 11 November 2014, be reinstated.
6. Among the grounds stated on the face of the motion for this latter application were that there was an error in calculating the compensation and award; that the Claimant's advocate on record had instructed an advocate based in Nakuru to attend Court and seek adjournment to enable the Respondent file appropriate responses to the review application but the said advocate did not attend Court and, that the Claimant stood to suffer immense financial loss if the review application was not reinstated.
7. Mr. Stephen Gitonga Mureithi, Advocate on record for the Claimant swore a supporting affidavit. He deposed that he had agreed with the Respondent's advocate on record, Mr. Kidiavai to allow him time to respond to the review application and that at the same time he instructed an advocate in Nakuru to hold his brief but the advocate did not attend Court on 9 December 2014.
8. In brief submissions, Mr. Muchela holding brief for Mr. Gitonga urged that an innocent litigant should not be punished for the mistakes of his advocate.
9. This motion can be disposed off shortly.
10. Firstly, parties cannot agree among themselves to allow an adjournment. The parties must satisfy the Court that an adjournment is necessary before the Court grants or adjourns the Cause. It is the Court which makes the decision and any agreement between litigants must be scrutinized by the Court.
11. The agreement between Mr. Gitonga and Mr. Kidiavai therefore did not grant an automatic adjournment. It was an inchoate agreement with no legal force.
12. It was also incumbent upon the Respondent to give sufficient reasons why it had not responded to the review application within reasonable time to merit an adjournment.
13. Secondly, a party seeking the Court to exercise its discretion, in a case such as the present one

- should make frank and honest disclosure.
14. The Court is a Court of record and where like in the instant case, a party seeks to rely on some factual information to explain its failure, full disclosure should be made.
 15. The Claimant herein did not attempt to name the advocate who had been instructed to attend Court or give any explanations why the advocate did not attend Court.
 16. Considering the above, the Court declines the invitation by the Claimant and dismisses the motion filed in Court on 8 January 2015, with no order as to costs.

Delivered, dated and signed in open Court in Nakuru on this 6th day of March 2015.

Radido Stephen

Judge

Appearances

For Claimant Mr. Muchela instructed by Gitonga Mureithi & Co. Advocates

For Respondent Kidiavai & Co. Advocates (did not appear during hearing of application)