



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAKURU
CAUSE NO. 127 OF 2014
JOHN NGANGA MANGAE.....CLAIMANT

v

KENYA COMMERCIAL BANK LTD.....RESPONDENT

RULING

1. On 18 December 2014, the Court, in the presence of Mr. Kairo for the Claimant and Mr. Mbatia for the Respondent, fixed the Cause for hearing on 11 March 2015.
2. When the Cause was called out for hearing on 11 March 2015, none of the parties' counsels were in Court and the Court dismissed the Cause for non-attendance.
3. The dismissal prompted the Claimant to file an application on 13 March 2015 seeking a review/setting aside of the order dismissing the Cause.
4. Among the grounds/reasons tendered were that the Claimant was in Court on 11 March 2015, but due to his unfamiliarity with Court procedures he did not inform the Court that his Advocate was ready to proceed. It was also contended that Mr. Kairo who had the brief was unwell (various medical reports were annexed to the affidavits).
5. Mrs. Njoroge who prosecuted the Claimant's application indicated that the Claimant was ready to pay thrown away costs.
6. The Respondent opposed the application and filed a replying affidavit sworn on 18 March 2015. According to the Respondent, the orders sought were unmerited. The Respondent also faulted the Claimant's counsel for not alerting its counsel of his illness.
7. The Court has considered the application and affidavits in support and opposition and the submissions and has come to the view that the order dismissing the Cause be reviewed and the Cause be reinstated to be heard and determined on the merits.
8. The Court has come to that view because even the Respondent's counsel who has opposed the application was not present in Court on 11 March 2015. It is each and every advocate's duty as an officer of the Court to be present in Court whether it is for a mention or hearing or make suitable alternative arrangements to be represented.
9. The Court therefore grants order 3 of the Motion dated 12 March 2015.

10. Each party to bear own costs of the motion.

Delivered, dated and signed in Nakuru on this 15th day of May 2015.

Radido Stephen

Judge

Appearances

For Claimant Mrs. Njoroge instructed by Nancy Njoroge & Co. Advocates

For Respondent Mr. Mbatia instructed by Mburu Maina & Co. Advocates

Court Assistant Nixon Raiback