



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
CAUSE NO. 593 OF 2014

PETER OCHOLI

CLAIMANT

V

THE CHAIRMAN, B.O.M. AFRAHA HIGH SCHOOL

RESPONDENT

RULING

1. Before Court is a motion dated 26 February 2015 by the Claimant seeking

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2. THAT this honourable court be pleased to reinstate this suit which was dismissed on a notice to show cause.

2. On 17 November 2014, the Claimant appeared in the Court's registry and fixed the Cause for mention on 26 January 2015.
3. The Court did not sit on 26 January 2015 and a general notice was issued that the Cause would be mentioned on 2 February 2015. None of the parties attended Court on this latter day, and the Court directed that a notice to show cause why suit should not be dismissed be issued. Return date was set for 13 February 2015.
4. On 13 February 2015, only the Respondent was in attendance in response to the show cause notice. The Court dismissed the suit as a consequence, hence the present application.
5. Among the reasons advanced by the Claimant in seeking to reinstate the Cause are that, directions had not been taken; that the Cause was not cause listed on 2 February 2015 and that his Advocate thought it was coming up for directions, and that he is desirous of prosecuting the Cause.
6. The Respondent opposed the application and relied on a replying affidavit of one, Fredrick Mbutia. The authority of *Shah v Mbogo & Another* (1967) EA 116 was cited.
7. The Claimant has not denied that he was served with the show cause notice which had a return date of 13 March 2015.
8. The Claimant did not attend Court on 13 March 2015. That the Claimant was aware of the notice to show cause is underscored by the fact that in addition to the notice which was served by the Court, he further went ahead and served the Respondent with a Mention Notice for 13 March 2015.
9. With all the information and knowledge, the Claimant's Advocate has not explained why he did not attend Court on 13 March 2015.
10. In submissions in support of the motion, Mr. Simiyu stated that his Clerk was in Court on 13 March 2015. This piece of evidence should have been deposed to in the supporting affidavit but was not.
11. In the view of the Court, this submission was an afterthought.
12. The order sought by the Claimant is discretionary and like any other discretionary power, it should

be exercised judiciously and not arbitrarily. A party seeking such order should therefore tender sufficient reasons and make honest disclosure of the facts within his knowledge. The Claimant has not even attempted to explain why there was no representation/attendance on his part on 13 March 2015.

13. Advocates have a professional duty to attend Court even during mentions and if not able to attend, suitable arrangements for representation by colleagues should be arranged in good time.

14. With the failure to explain the absence, the Court declines to exercise its discretion to reinstate the Cause.

15. The motion dated 26 February 2015 is therefore dismissed with costs to the Respondent.

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

Radido Stephen

Judge

Appearances

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

For Respondent Mr. Mburu instructed by Rodi, Orege & Co. Advocates

Nixon Court Assistant