



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT
AT MOMBASA
CAUSE NUMBER 115 OF 2012

BETWEEN

DAVID KABORI RIMBERIA.....APPLICANT/CLAIMANT

VERSUS

SUMMIT COVE LINES CO. LTD.....1ST RESPONDENT

JOSEPH MUTHAMIA KIREMA.....2ND RESPONDENT

Rika J

Court Assistant: Benjamin Kombe

Akanga Alera & Associates, Advocates for the Claimant absent

Mr. Oloo Advocate holding brief for Mokaya Ogutu & Co. Advocates for the Respondents

RULING

1. The Claim was dismissed with no order on the costs, by Hon. Justice Stephen Radido, on 27th September 2013.
2. The Claimant testified on 28th June 2013. He intended to call additional Witnesses, and was granted 29th August 2013 to present these Witnesses.
3. On 29th August 2013 the Advocates requested the Court to have the hearing deferred, stating the date was not convenient to them.
4. The Court disagreed with the Advocates' request and directed hearing to proceed at 2.30 pm.
5. The request was made by Advocates holding brief in either case, for the Advocates on record.
6. At 2.30pm, no Advocate appeared in Court, resulting in the order for dismissal of the Claim.

7. The Claimant filed an Application for Review of the dismissal order, dated 12th November 2013. He prays the Court to review and set aside that order, and allow the resumption of proceedings.
8. The Claimant explains that on 17th August 2013, his Advocate was involved in a road traffic accident. He was injured and had not sufficiently mended by the date of the hearing.
9. The Respondent's Advocate was informed about the Claimant's Advocate's accident. The Respondent's Advocate had also wanted to take her Children back to School on 29th August 2013. There was concurrence between the Parties' Advocates therefore that it would not be possible to go on with the hearing on the 29th August 2013.
10. When the matter was called for hearing at 2.30pm, the Claimant's Wife, Daughter, and remaining Witness were in attendance.
11. The Witness stood up, and alerted the Court about his presence, and readiness to testify. The Claimant himself was overseas.
12. The Advocates agreed this Application is considered and disposed on the basis of the Memorandum of Review and Submissions on record.

The Court Finds:-

13. There are adequate reasons given why the ruling of 27th September 2013 should be revisited and vacated.
14. The Advocates entrusted briefs on the hearing date, appear not to have ably communicated their Colleagues' inability to attend Court. They did not reveal to the Court about the Claimant's Advocate's accident, or the Respondent's Advocate's maternal obligations. The concurrence between the 2 Advocates was wrongly packaged and perceived as a *fait accompli* thrown at the Court, that hearing would not in any event proceed. The absence of any Advocate in the afternoon concretized the perception.
15. Courts as stated in the ruling of Radido J, manage their own diaries. Parties and their Clients should not impose their preferred dates on the Court's Calendar, or reschedule matters at their own level, with reckless abandon.
16. However, Courts too should exercise caution not to misjudge the genuineness of Advocates' requests for reschedule of matters. We all need a work-life balance.
17. The Court has considered both Advocates had genuine reasons to be absent. Failure was in their briefing of the Court. Secondly, the Claimant's family was in Court. The Witness was in Court and ready to proceed. Should not the Witness's presence and engagement with the Court and the presence of the Claimant's Wife and Daughter, have softened the stance taken by the Court? Should the Claimant be prejudiced by the absence of his Advocate?
18. Parties should be given another chance to conduct their respective briefs. This is in the interest of justice.

IT IS ORDERED:-

- a. ***The Order for dismissal of the Claim issued on 27th September, 2013 is reviewed and set aside.***
- b. ***The Parties shall resume proceedings from where they left off.***
- c. ***Any future adjournments sought, to be kept at a minimum, and effectively communicated to the Court and all involved Parties.***
- d. ***Costs in the Cause.***

Dated and delivered at Mombasa this 26th day of June 2015

James Rika

Judge