



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU**

**CAUSE NO. 6 OF 2014**

**JACKLINE WAMBUI GITAU**

**CLAIMANT**

**v**

**CLINIX HEALTH CARE LTD**

**RESPONDENT**

**RULING**

1. The Cause herein was scheduled for hearing on 13 October 2014. When the Cause was called, Ms. Muthoni appeared for the Claimant while the Respondent was absent. The Court was not satisfied with the service of hearing notice and the hearing was rescheduled to 23 April 2015.
2. The Court directed the Claimant to serve a hearing notice.
3. Come 23 April 2015, when the Cause was called out for hearing none of the parties or their legal counsels were present. The Court therefore dismissed the Cause.
4. The Claimant filed a motion on 28 April 2015 seeking that the Cause be reinstated. The Court directed that the motion be served for *inter partes* hearing on 7 May 2015.
5. The Respondent did not appear during the *inter partes* hearing of the motion. There was evidence of service of the application upon William Lusweti, Advocate for the Respondent.
6. Ms. Muthoni therefore urged that the motion was not opposed and sought that it be allowed.
7. The Court has considered the motion and the grounds thereon and the supporting affidavit of Muthoni Muchiri.
8. When the Court adjourned the hearing on 13 October 2014, it was because there was no evidence on record that service had been effected.
9. While adjourning the hearing to 23 April 2015, the Claimant was expressly directed to serve a hearing notice. None of the parties was in Court when the Cause was called. The supporting affidavit stated that the Claimant arrived late.
10. The Court has looked at the record.
11. There is no evidence that the Claimant served a hearing notice upon the Respondent for the hearing set for 23 April 2015. There is no affidavit of service. From the record, it is therefore logical to conclude that the Claimant had not complied with peremptory orders on service of a hearing notice.
12. In the circumstances, the Court cannot accept the explanation by the Claimant that she was ready to proceed on 23 April 2015.
13. The Court is not satisfied that it should exercise its discretion in favour of the Claimant as no sufficient reasons have been given.
14. The motion dated 23 April 2015 is thus dismissed with no order as to costs.

**Delivered, dated and signed in Nakuru on this 26<sup>th</sup> day of June 2015.**

**Radido Stephen**

**Judge**

**Appearances**

For Claimant Ms. Muthoni instructed by Karanja Mbugua & Co. Advocates

For Respondent Absent

Court Assistant Janet