

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NYERI

CAUSE NO. 55 OF 2013

GRACE NJURA IRERI..... CLAIMANT

VERSUS

KETNNO SACCO LIMITED..... RESPONDENT

(Before Hon. Justice Byram Ongaya on Friday 17th July, 2015)

RULING

This suit was consolidated with cause no. 54 of 2013 at Nyeri, **Rachel Irima Nyaga –Versus- KETNNO Sacco Limited**, by the court order given on 7.06.2013. On 22.05.2014 parties agreed to negotiate a settlement in both suits. Counsel for the respondent informed court that cause no. 54 of 2013 was settled outside court and that no further steps were taken by the claimant in this suit towards the prosecution of the suit. The claimant was served with the notice dated 5.06.2015 to show cause why the suit ought not be dismissed for want of prosecution. The notice to show cause came up for hearing on 23.06.2015 when both parties were absent and the court dismissed the suit with costs for want of prosecution.

The claimant filed a notice of motion on 02.07.2015 under Order 12 Rule 7, Order 51 Rule 1 of the Civil Procedure Rules, Section 1A, 1B and 3A of the Civil Procedure Act and all enabling provisions of law. The claimant prayed for setting aside of the orders of 23.06.2015, reinstatement of the suit for hearing and determination on merits, and for costs of the application to be in the cause.

The main reason advanced by the claimant is that the notice to show cause was served upon her former advocates Beth Ndongoro & Company Advocates so that she could not attend court when the notice to show cause came up as the advocates did not inform her to attend court.

The respondent opposed the application by filing on 15.07.2015 the replying affidavit of Njeru Robinson Ngari Advocate. The main opposition is that the claimant was served with the notice to show cause and not her former advocates. Thus the ground in support of the application to set aside the dismissal is not truthful and the application should fail. As there was no mistake on the part of the claimant's former advocates, the application should fail.

The court has revisited the memorandum of claim and the address provided by the claimant was P.O. Box 156 Runyenjes and the notice to show cause under Order 17 Rule 2 (1) of the Civil Procedure Rules was addressed to the claimant at that address. The claimant has not denied receipt of that notice and the court finds that the claimant's application was founded upon misleading ground that it was her former advocates that were served with the notice. Accordingly, the court finds that the application will fail.

In conclusion, the notice of motion dated 1.07.2015 and filed on 02.07.2015 is hereby dismissed with costs.

Signed, dated and delivered in court at Nyeri this **Friday, 17th July, 2015.**

BYRAM ONGAYA

JUDGE