

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NUMBER 858 OF 2014

ROBERT ONGERI.....CLAIMANT

VERSUS

RAMBOO COLOURCANE.....RESPONDENT

RULING

1. The respondent in this matter seeks that the exparte hearing which took place on 22nd June, 2015 be set aside and that the proceeding do commence afresh. According to the respondent's counsel, failure to attend Court was caused by failure to diarize the hearing date. Counsel has made the now common place excuse that such omission by Counsel should not be visited on his client. Whereas failure to diarize a hearing date is carelessness on part of Counsel and his Court Clerk, a denial of a hearing is a serious order which should be made in exceptional cases. This matter proceeded ex parte on 22nd June, 2015 and a judgment reserved for 1st July 2015. On 1st July, Counsel for the respondent informally asked me to defer the judgment as they intended to have the exparte hearing set aside. I asked Counsel to make a formal application for me to appreciate its merit. This prompted the present application. From the foregoing it cannot be disputed that the respondent has acted with diligence to have the ex parte hearing set aside.

2. Considering that the evidence by the claimant was very brief and taking into account the fact that a hearing on merit is more effective in dispute settlement than a determination on technicality or omission, this Court will give the applicant the benefit of doubt and order that the suit recommences afresh on a date to be fixed at the registry.

3. The applicant shall meet the claimant's costs.

4. It is so ordered.

Dated at Nairobi this 6th day of November 2015

Abuodha J. N.

Judge

Delivered this 6th day of November 2015

In the presence of:-

.....for the Claimant and

.....for the Respondent.

Abuodha J. N.

Judge