



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
CAUSE NO. 565 OF 2014

(Originally Nakuru High Court Civil Case No. 2 of 2003)

PETER NJUGUNA MURIMA

CLAIMANT

v

POSTAL CORPORATION OF KENYA

RESPONDENT

RULING

1. The present Cause was filed in the High Court on 17 January 2003. The Claimant alleged unlawful dismissal. A Statement of Defence was filed on 21 February 2003. Other documents were subsequently filed by both parties.
2. The case came up for hearing on 14 July 2005 before Musinga J (as he was then). It was adjourned to 13 September 2005 when it was partly heard.
3. When the case came up for directions on 25 November 2005, none of the parties were represented. Nothing happened until 3 May 2010 when the parties appeared before Maraga J (as he was then) and the case was stood over to 18 May 2010 for hearing. On this day, it could not be reached and hearing was adjourned to 26 July 2010.
4. On 26 July 2010, the Claimant applied to amend the Plaintiff and a ruling allowing the same was delivered on 26 November 2010.
5. The next time the case was mentioned in Court again was on 12 June 2012 when the Claimant sought to have the matter taken out of the hearing list.
6. The next hearing was scheduled for 28 May 2013. On this day, Mr. Kimatta for the Claimant sought an adjournment and he informed the Court that he had been unable to trace the Claimant for the preceding 3 months.
7. Emukule J before whom the file was placed allowed the adjournment and at the same time vacated the earlier orders granted to the Claimant to file an amended Plaintiff.
8. The next hearing was on 16 December 2013. The hearing was adjourned on the application of the Respondent's new advocate who needed time to familiarize himself with the file.
9. When the case was mentioned before Mulwa J on 22 October 2014, she directed that it be transferred to this Court for hearing and determination.
10. Consequent upon the transfer, the Cause was placed before me on 7 November 2014, and I gave directions that the Claimant and Respondent do file and serve witness statements and that the Cause be heard on 17 December 2014.
11. On 17 December 2014, the Cause could not proceed because the Court was informed that Mr. Kimatta was before the National Assembly. The hearing was then adjourned to 23 November 2015.
12. Come 23 November 2015, Mr. Kimatta sought an adjournment on the ground that he was not able to trace his client as calls to his mobile number were not going through. The Respondent indicated that he was ready to proceed with 1 witness.

- 13.The Court directed that it would deliver a ruling on the adjournment application today.
- 14.The hearing was fixed about 1 year ago. The Claimant's advocate therefore had more than sufficient time to contact him and advise him of the hearing date.
- 15.Further, this was not the first time that Mr. Kimatta was seeking an adjournment on the ground that he could not trace the Claimant. Similar reason had been tendered on 28 May 2013.
- 16.The interlude between 2013 and 2015 when adjournment was sought on similar grounds was more than enough for Mr. Kimatta to consider the options available to him if he could not get in touch with his client.
- 17.In the view of the Court, it is the Claimant who appears disinterested in having this old Cause heard and determined on the merits. With the slightest interest in his case, he ought to have taken time to follow up with his advocate on record on the prosecution and conclusion of the Cause.
- 18.Cases cannot remain in the Court docket without sufficient and reasonable explanation on why the case should be kept pending.
- 19.Both the Claimant and the Respondent ought to have an interest in the expeditious determination of a case presented before Court. That is what justice demands. As it is, this case has been in the system for about 12 years and with the disinterest exhibited by the Claimant, the Court has no option but to order that it be dismissed.
- 20.No order as to costs.

Delivered, dated and signed in Nakuru on this 4th day of December 2015.

Radido Stephen

Judge

Appearances

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

For Respondent Mr. Otieno instructed by Robson Harris & Co. Advocates

Court Assistant Nixon