



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA AT MOMBASA

(BIMA TOWERS)

CAUSE NO. 368 OF 2013

PATRICK A ASOHA

CLAIMANT

v

PAOLO ROSSI

1st RESPONDENT

VOLCANO DIANI BEACH

2nd RESPONDENT

RULING

1. The Claimant through the firm of Siocha Okemwa & Co. Advocates filed a Memorandum of Claim against the Respondents on 6 November 2013 alleging unlawful redundancy and non-compliance with General Wages Order.
2. On 9 December 2013 the parties appeared before me and informed me that they wished to negotiate an out of court settlement. Mr. Njoroge for the Respondent also sought time to file a Response. I gave Mr. Njoroge 14 days within which to file a Response. The Cause were set for mention on 27 March 2014.
3. On 27 March 2014 none of the parties attended Court and I directed the Deputy Registrar to issue a notice to the Claimant to show cause why the suit could not be dismissed with a return date of 3 April 2014.
4. On 3 April 2014 none of the parties appeared and I dismissed the Cause. This was on the basis that there was on record a Notice to Show Cause dated 27 March 2014 from the Deputy Registrar addressed to both Advocates.
5. On 25 April 2014 the Claimant filed a motion seeking the variation of the order dismissing the suit and reinstating the suit.
6. When the motion came up on 21 May 2014, Mr. Okemwa informed me that they had consent to allow the motion. But I declined and ruled that the motion could not be compromised through consent and should be argued.
7. Before dealing with the motion on the merits I need to observe that parties cannot consent to reinstate a suit which has been dismissed by a Court since the dismissal order made by the Court through its inherent and statutory powers.
8. On the merits Mr. Okemwa stated that he was relying on the grounds set on the face of the motion and his supporting affidavit sworn on 25 April 2014. The grounds are that Mr. Okemwa was before the High Court in two different matters on 3 April 2014 and that the Advocates had mistakenly conceived the Cause was coming up on 2 April 2014 rather than 3 April 2014 and that the Respondent would not suffer any prejudice were the motion to be allowed.
9. Mr. Okemwa more or less deposed on the lines of the grounds save that both parties were at an advanced stage of negotiations.
10. One of the main reasons given by Mr. Okemwa was that he was before Odero J and Mukunya J on

3 April 2014 when this Cause came up. But Mr. Okemwa has not given any further details relating to the suits he was appearing before the two Courts.

11. In the view of the Court, this matter has been handled in a dilatory way. The Claimant should have given sufficient details on which cases the Advocate was attending to on 3 April 2014 bearing in mind he was seeking the Court to exercise its discretion in his favour.

12. The motion dated 25 April 2014 is therefore dismissed with no order as to costs.

Delivered, dated and signed in open Court in Mombasa on the 30th day of May 2014.

Radido Stephen

Judge

Appearances

Mr. Okemwa instructed by Siocha Okemwa & Co. advocates for Claimant

Mr. Njoroge instructed by Njoroge Katisya & Co. Advocates for Respondent