



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA

AT NAIROBI

CAUSE NO. 1388 OF 2016

(Before Hon. Mr. Ocharo Kebira on 28th March 2022)

PRISCILLAH AMWOSO NYIKULI.....CLAIMANT

FLORAL HERITAGE LIMITED AND ANOTHERRESPONDENT

RULING

1. Through an Application dated 20th January 2022, the Claimant/Applicant seeks for the following orders:
 - a) *The orders of this Honourable Court made on the 29th September 2021, dismissing this suit for want of prosecution be set aside, reviewed and/or varied.*
 - b) *The suit herein filed at or the 15th July 2016 and grounded on 27th August 2019 be reinstated.*
 - c) *The Honourable Court be at liberty to make and/or issue such orders as it may deem fit and fair to grant.*
2. The application is premised on the grounds obtaining on the face of the Application, and those obtaining in the Affidavit sworn on 20th January 2022 by Priscillah Amwoso Nyikuli, the Claimant.
3. The Claimant/Applicant contended that the Respondent despite being served with summons to enter appearance, has to date neither entered appearance nor filed a memorandum of response.
4. It was further asserted that on the 10th March 2021, keen to have the matter heard, the Claimant's Counsel wrote a letter to Court through the Deputy Registrar seeking for a date for pre-trial directions.
5. That the Deputy Registrar did not act on the letter.
6. The Applicant stated that later her Counsel was served with a notice to show cause why the matter should not be dismissed for want of prosecution. The show cause was slated for the 24th August 2021. Consequently, the Claimant's/Applicant's Counsel filed a replying affidavit sworn on the 30th August 2021, demonstrating that the matter was not one fit for dismissal for want of prosecution.
7. That the matter came up for showing cause on the 29th September 2021, Counsel did not attend Court because she had mis-diarized the matter as coming up for 29th October 2021 for the show cause.

8. That the Advocate's failure to attend Court on the 29th September 2021 was neither intentional nor deliberate. Counsel's mistake should not be visited on a litigant.

Determination

9. The Application is not opposed by the Respondent. Given that, it has not filed any response to the Application, coupled with the fact that; the application has been brought without undue delay, the Court is convinced that the counsel's failure to attend court was not deliberate and that counsel's mistake which is not deliberate should not be visited upon a litigant, I am persuaded to allow the Respondent's/Applicant's Application herein in the following manner;

- a) That the proceedings herein of 29th September 2021 are set aside.
- b) The Claimant's suit herein is reinstated for hearing on merit.
- c) Owing to the age of this matter, the same shall be set down for hearing on a priority basis.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 28TH DAY OF MARCH, 2022.

OCHARO KEBIRA

JUDGE

Delivered in presence of:

Ms. Mideva for the Claimant / Applicant.

No appearance for Respondent.



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