



Mohammed v Guru Mechanical Engineerings Limited (Environment & Land Case E064 of 2023) [2024] KEELC 6524 (KLR) (3 October 2024) (Ruling)

Neutral citation: [2024] KEELC 6524 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E064 OF 2023
LN MBUGUA, J
OCTOBER 3, 2024**

BETWEEN

HANIM MOHAMMED PLAINTIFF

AND

GURU MECHANICAL ENGINEERINGS LIMITED DEFENDANT

RULING

1. Before me is the plaintiff's Notice of Motion application dated 21.5.2024 seeking orders for reinstatement of the suit which was apparently dismissed on 29.4.2024. The grounds in support of the application are that on 1.2.2024 the Court gave the plaintiff leave to serve the summons by 3.3.2024 and set down the suit for mention on 29.4.2024. That in compliance with these directions, the Plaintiff served the Respondent on 28.3.2024 and filed an affidavit of service to that effect adding that on 29.4.2024, the matter was not listed in the cause list.
2. In opposition thereof, the respondent filed grounds of opposition dated 13.6.2024, stating that the plaintiff was given a last chance on 1.2.2024 to effect service of summons of their pleadings but they never complied, thus the suit was lawfully dismissed.
3. I have considered all the arguments raised herein including the submissions of the parties. The records of 1.2.2024 reads as follows; "The plaintiff is granted one more month that is by 3.3.2024 to effect service of summons failure to which the suit shall stand as dismissed. Mention on 29.4.2024".
4. It follows that even if the court marked the matter as dismissed on 29.4.2024, there was no suit as at 4.3.2024 in the event that there was no compliance with the orders of 1.2.2024 which were self executing. A perusal of the electronic file (the CTS portal) reveals that there was no evidence of compliance as at 3.3.2024. Even at paragraph 5 of the supporting affidavit to the application, the deponent states that service was effected on 28.3.2024. Certainty the date of 28.3.2024 is different from 3.3.2024! The affidavit of service was only filed on 21.5.2024, and in any event, it reflects the service



date as 28.3.2024. Thus regardless of whether the matter was cause listed or not, the plaintiff did not comply with the self executing orders of 1.2.2024.

5. I am in agreement with the plaintiffs submissions that the right to be heard is sacrosanct. However, a party is only entitled to reasonable time to present their case; See *Moschion v Mwangi* (Environment & Land Case 350 of 2018) [2023] KEELC 17144 (KLR) (27 April 2023) (Ruling) Neutral citation: [2023] KEELC 17144 (KLR) (Mbugua J).
6. In the case at hand, no plausible explanation was advanced as to why the orders of 1.2.2024 were not complied with. However, I have taken into account that the matter is rather fresh, the plaintiff now appears to be vigilant to prosecute his case and the defendant is certainly on board. In the circumstances, this suit is hereby reinstated on condition that the plaintiff will pay to the respondent throw away costs of ksh.30,000 before the next court date.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 3RD DAY OF OCTOBER, 2024
THROUGH MICROSOFT TEAMS.**

LUCY N. MBUGUA

JUDGE

In the presence of:-

M/s Julu for Plaintiff

Mohamed for defendant

Court assistant: Joan

