



Assets Recovery Agency v Rainbow Techemploy Africa Limited (Anti-Corruption and Economic Crimes Civil Suit E040 of 2022) [2024] KEHC 6967 (KLR) (Anti-Corruption and Economic Crimes) (13 June 2024) (Ruling)

Neutral citation: [2024] KEHC 6967 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
ANTI-CORRUPTION AND ECONOMIC CRIMES
ANTI-CORRUPTION AND ECONOMIC CRIMES CIVIL SUIT E040 OF 2022**

EN MAINA, J

JUNE 13, 2024

BETWEEN

ASSETS RECOVERY AGENCY APPLICANT

AND

RAINBOW TECHEMPLOY AFRICA LIMITED RESPONDENT

RULING

1. Before me is an application by the Respondent, who was the Applicant in the Notice of Motion dated 7th February 2024, which this court dismissed on 8th April 2024. By the said application the Respondent was seeking an order for stay of execution of the judgment of this court rendered on 23rd November 2023 and thereafter an order for review or setting aside of the judgment.
2. When the application dated 7th February 2024 first came before me for directions on 4th March 2024, the same had not been served and Counsel for the Respondent/Applicant was directed to serve the same. To save time, this court also gave directions that the application would be canvassed by way of written submissions which were to be filed and exchanged within 21 days. According to the record, Counsel for the Applicant was to file and serve their submissions within 7 days whereupon Counsel for the ARA/Respondent would file theirs within 14 days. Further mention was to be on 8th April 2024 for purposes of confirming compliance so as to give a date for a ruling. However, on 8th April 2024 Counsel for the Respondent/Applicant did not attend and noting that the court had also not received the Respondent/Applicant's submissions this court dismissed the application: for non-attendance and for failure to file submissions as directed.
3. The present Notice of Motion, which is dated 8th April 2024 seeks to set aside the order for dismissal. The gist of the application is that the non-attendance was not deliberate but was "due to an inadvertent



technological error and internet failure affecting the Advocate’s gadget leading to his inability to attend virtual court” and that the advocate was not in any case “admitted to the virtual court”. It is submitted that the court ought never to dismiss a case on a technicality; that the mistake of Counsel should not be visited on the client, and further that this application has been made without undue delay and hence it should be allowed so that the dismissed application is reinstated and heard on its merits.

4. The ARA/Respondent opposed the application through a replying affidavit sworn by Isaac Nakitare on 22nd April 2024, where he deposes that the application was properly dismissed not only for non-attendance by the Applicant’s Advocates but also for non-compliance with the directions of this court in respect to filing of submissions; that there is no evidence that Counsel for the Applicant was logged into the virtual court but was not admitted as alleged and that this court ought not to exercise its discretion in favour of the Respondent/Applicant given the various other lapses that have characterised its participation in this case and which had even resulted in a default judgment being entered against it on 9th March 2023 but which was later set aside by this court.
5. This application was canvassed by way of written submissions and I confirm that the court received submissions from both sides.
6. I have carefully considered the application, the grounds, the affidavits both in support and in reply, the annexures, the rival submissions, the cases cited and the law. I am not persuaded that this application is merited. To begin with, the directions of a court, on the manner of disposal of a matter before it, is not a technicality and hence dismissal of an application on that ground is not a mere technicality to be wished away under Article 159 of *the Constitution*. Counsel for the Applicant did not file their submissions and did not attend court to explain why the submissions were not filed and even to date the submissions have not been filed as a demonstration of the Applicant’s bona fides as would entitle this court to exercise its discretion in the Applicant’s favour.
7. The allegation that Counsel for the Applicant was prevented from logging into the virtual court by a technical hitch is mischievous as no such hitch occurred on the alleged date. Indeed, the screen shot annexed by learned Counsel for the Applicant does not show that the attendee was locked out – but rather merely that a video and mic were off. This definitely would not have been possible to see if they were logged out. Moreover, the name of the affected Counsel is not indicated and neither is the specific court identified.
8. Whereas I appreciate that the discretion of this court is wide and unfettered, it is also trite that such discretion ought only to be exercised judicially but not whimsically or even to aid an indolent party such as the Respondent/Applicant. It would also not be in the interest of justice to exercise the court’s discretion in such a manner as would negate to the overriding objective of the rules as set out in Sections 1A and 1B of the *Civil Procedure Act* which objective is to facilitate the just, expeditious, proportionate and affordable resolution of the civil disputes governed by the Act. The proceedings under the *proceeds of Crime and Anti-Money Laundering Act* are civil proceedings. The Respondent/Applicant filed an application which it neglected to prosecute and this court acted as it should have under the rules. I find that, no plausible reasons have been advanced to warrant this court to set aside its order.
9. The upshot is that the application lacks merit and it is dismissed with costs to the ARA/Respondent.

Orders accordingly.

Signed, dated and delivered virtually on this 13th day of June, 2024.

E N MAINA

JUDGE



In the presence of: -

Julie Marete for the Applicant

Mr. Gitinji for the Respondent

Court Assistant: - Jael

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