



**Muoki v Marugi (Cause E503 of 2018) [2025] KEELRC 2450 (KLR) (17 September 2025) (Ruling)**

Neutral citation: [2025] KEELRC 2450 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E503 OF 2018  
NJ ABUODHA, J  
SEPTEMBER 17, 2025**

**BETWEEN**

**PHILIP MUCHOKI MUOKI ..... CLAIMANT**

**AND**

**GEORGE MARUGI ..... RESPONDENT**

**RULING**

1. Before me is an application dated 27<sup>th</sup> August, 2018 seeking the setting aside of the dismissal of the suit herein dated 2<sup>nd</sup> May, 2018 for want of prosecution on the grounds of among others that the failure to attend Court by the Counsel was not deliberate and that the claimant had made several attempts through her advocate to set down for hearing, the suit without success and that failure to attend court was not deliberate and excusable.
2. The application was supported by Counsel Khalwale who deponed among others that he has made efforts to set down for hearing, the suit herein without success and that in September while checking the position of the case in the portal he found that the case had been dismissed for want of prosecution.
3. Counsel swore a further affidavit in which he deponed that in his earlier affidavit sworn on 27<sup>th</sup> August, 2024 he omitted to attach the several letters to the Court seeking to set down for hearing the suit without success. He therefore attached the said letters.

**Determination**

4. The objective of the Court is to determine finally, any dispute presented before it. Counsel has deponed that he wrote severally to court asking for a mention to fix the suit for hearing but never received any response. The Court has perused the record and noticed that the claimant counsel appeared in Court on 22<sup>nd</sup> September, 2022 seeking a date for hearing and asked for a hearing date and it would appear that the matter was fixed for hearing by the DR on 7<sup>th</sup> November, 2022. It came before Honourable Lady Justice Mbaru on that date and both parties were absent. The matter was therefore dismissed for



want of prosecution. It however took more than two and a half years before the present application was brought. The Court therefore attributes this as dilatoriness on the part of Counsel and or the claimant.

5. As mentioned earlier, the objective of the court is to determine finally, the disputes presented before it and dispense justice. This however ought not to be taken advantage of by the litigants. The court will accord the claimant the benefit of doubt in the failure to diligently prosecute the case and reinstate the same but direct that the same be mentioned on 13<sup>th</sup> October, 2024 before me for purposes of fixing a hearing date.
6. It is so ordered.

**DATED AT NAIROBI THIS 17<sup>TH</sup> DAY OF SEPTEMBER, 2025.**

**DELIVERED VIRTUALLY THIS 17<sup>TH</sup> DAY OF SEPTEMBER, 2025.**

**ABUODHA NELSON JORUM**

**PRESIDING JUDGE-APPEALS DIVISION**

