



**Odalo v Technical University of Mombasa (Cause E005 of 2024)  
[2024] KEELRC 2087 (KLR) (18 July 2024) (Ruling)**

Neutral citation: [2024] KEELRC 2087 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA  
CAUSE E005 OF 2024**

**M MBARŪ, J  
JULY 18, 2024**

**BETWEEN**

**JOSHUA ODALO ..... CLAIMANT**

**AND**

**TECHNICAL UNIVERSITY OF MOMBASA ..... RESPONDENT**

**RULING**

1. The respondent, the Technical University of Mombasa filed an application dated 8 May 2024 under the provisions of Order 45 Rule 1 of the Civil Procedure Rules seeking orders;

The court be pleased to set aside the orders issued on the 8<sup>th</sup> day of May 20-24 closing the respondent case, recall the claimant for cross-examination and grant the respondent an opportunity to defend the claim.

This court be pleased to make any other orders as it deems fit in the circumstances.

The costs of this application be provided for.

2. The application is supported by the Affidavit of Hamisi Ali Mwadzogo advocate for the respondent who avers that he is the counsel attending. On 19 March 2024, both parties attended court and by consent, a hearing date was allocated but he inadvertently diarized it for 9 May 2024 instead of 8 May 2024 as agreed. He only realized the error on the evening of 8 May 2024 while retrieving the cause list in preparation for the hearing wrongly diarized for 9 May 2024. Due to the error in diarizing the matter, he was not able to attend court on 8 May 2024 for the hearing when the matter proceeded and closed.
3. The respondent who is the original litigant highly regrets the error in diarizing the matter properly and the mistake of counsel should not be visited on the respondent. No prejudice will be visited upon the claimant if the matter is heard and the respondent is allowed to recall him for cross-examination and the defense.



There is no response from the claimant.

4. The matter came up for hearing on 10 June 2024. The claimant was not opposed to the application save that he should be paid his costs.

### **Determination**

5. A hearing date secured through the consent of the parties is binding. It is not similar to a proposal pending confirmation. The act of attending court to secure a hearing date is a core function of the court towards access to justice and should not be negated through the conduct of parties. The respondent is attending these proceedings through its in-house counsel. He is bound by the rules of the court in equal measure for other counsels attending. To urge the court that the mistake of counsel should not be visited against the innocent respondent is to avoid the link between counsel attendance herein as in-house counsel for the respondent and his overall duty as an officer of this court.
6. The claimant too took a laid-back position and did not file any response. During the hearing on 10 June 2024, his only wish was to be paid costs.
7. Allocation of a hearing date by consent should be taken seriously. Parties do not aid the course of justice by deliberate failure to attend court.
8. I take note Judgment herein was issued on 4 July 2024. The hearing closed on 8 May 2024 after which, the respondent filed the instant application on 14 May 2024.
9. The respondent has admitted that the hearing date for 8 May 2024 was allocated in court by the consent of the parties. There is an admission that the counsel for the respondent, Hamisi Ali Mwadzogo dated 8 May 2024 misdiarised the hearing date for 9 May 2024 instead of 8 May 2024. However, there is nothing to demonstrate such a lapse. The Supporting Affidavit to the instant application is bare.
10. Non-attendance in court following consent is not a casual matter. Diligence on the part of the respondent in attending court as required on 8 May 2024 is lacking.  
Judgment has since been issued.
11. There was no response to the instant applicant save to claim for costs.
12. The respondent is also seeking to be paid costs for this application despite the admission that there was a failure to attend court as required. There should have been an offer to meet the claimant's costs to allow him to return to court and be cross-examined. The award of costs should not be taken as a matter of course to be urged at every turn of events. It should be taken seriously and claimed on merits.
13. The claimant attended diligently as required. His costs should be awarded to him and his advocate. These are assessed all at Ksh.50, 000 to be paid within 30 days after which the same should accrue interest at court rates until paid in full.
14. Taking the above into account, the instant application is without merit and is hereby dismissed. The claimant is awarded costs of Ksh.50, 000 to be paid within 30 days failure to which the same will accrue interests at the court rate.

**DELIVERED IN OPEN COURT AT MOMBASA THIS 18TH DAY OF JULY 2024.**

**M. MBARŪ**

**JUDGE**

In the presence of:



Court Assistant: Japhet Muthaine

..... and .....

