



**Omwega v Technical University of Mombasa (Cause E004 of 2024)
[2024] KEELRC 2086 (KLR) (18 July 2024) (Ruling)**

Neutral citation: [2024] KEELRC 2086 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
CAUSE E004 OF 2024**

**M MBARŪ, J
JULY 18, 2024**

BETWEEN

STANLEY NYARIBO OMWEGA 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;
 1. The court be pleased to set aside the orders issued on the 8th 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.
 2. This court be pleased to make any other orders as it deems fit in the circumstances.
 3. The costs of this application be provided for.
2. The Affidavit of Hamisi Ali Mwadzogo supports the application 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 diarised it for 9 May 2024 instead of 8 May 2024 as agreed. He only realised the error on the evening of 8 May 2024 while retrieving the cause list in preparation for the hearing wrongly diarised for 9 May 2024. Due to the error in diarising 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 diarising 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. 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.
6. The respondent has admitted that the hearing date for 8 May 2024 was allocated in court by the consent of the parties. However, the counsel asserts that he diarised the matter for 9 May 2024 instead of the actual date. In the Supporting Affidavit of Hamisi Ali Mwandzogo dated 8 May 2024, there is nothing to support such averments. No record whatsoever is filed to demonstrate the misdiarisation of the matter for 9 May 2024 instead of 8 May 2024.
7. Non-attendance in court following consent is not a casual matter. Bound under the consent to attend court as required, diligence on the part of the respondent demanded that there be attendance on the scheduled hearing date. Seeking to recall the claimant for cross-examination and urge the response upon failing to attend court on a date taken by consent, despite the offer by the claimant to be paid costs, this does not justify court non-attendance.

Judgment has since been issued.

8. There was no response to the instant application save to claim for costs.
9. 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.
10. 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 interests at court rates until paid in full.
11. 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 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

