



**Muriuki v Skyline Services Limited (Cause 1476 of 2018)
[2024] KEELRC 2170 (KLR) (30 August 2024) (Ruling)**

Neutral citation: [2024] KEELRC 2170 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1476 OF 2018**

**J RIKA, J
AUGUST 30, 2024**

BETWEEN

FRANCIS GITARI MURIUKI CLAIMANT

AND

SKYLINE SERVICES LIMITED RESPONDENT

RULING

1. The Respondent has applied to have the ex parte proceedings of 21st November 2023 set aside, and the Claim heard afresh.
2. The Application is supported by Affidavits filed by 2 of the Respondent’s Advocates, Tabitha Wambui Gitau and Martin Mwangi Kinyanjui, and also by an Affidavit of an Officer of the Respondent, Francis Lasalo Ngonga.
3. They explain their absence from the proceedings of 21st November 2023, as follows: the Law Firm instructed by the Respondent, Wanjao & Wanjao, was at the time of the hearing, in the process of merger with Martin Mwangi’s Law Firm, to found Wanjao & Mwangi Advocates; the Advocate who was in conduct of this matter, Gloria Lucky, left the new Firm on 26th July 2023; Gloria Lucky did not hand over the file on departure and actually left with the original file; and, she did not inform her remaining colleagues, that the Claim was scheduled for hearing on 21st November 2023.
4. The Deponents urge the Court not to victimize the Respondent, on account of the mistake of its Advocate. They urge the Court to note that the Claim is for a staggering sum of Kshs. 32,000,088. They only came to learn of the ex parte proceedings, when they were served with the Claimant’s Closing Submissions.
5. The Claimant relies on the Affidavit of his Advocate E.O. Nyakeriga. He states that the Application has no merit. He submits that the Court is functus officio, and cannot reopen the proceedings. Gloria Lucky never appeared for the Respondent, in the Claim. An earlier Application filed by the



Respondent, was supported by the Affidavit of Ceasar Wanjao, Advocate. Wanjao, not Gloria Lucky, was seized of the brief. On other occasions, Ngige Kinyua, Advocate, represented the Respondent. He scheduled the Claim for hearing on 21st November 2023. A line should be drawn, between mistake and negligence of an Advocate.

The Court Finds: -

6. The submissions of the Respondent's Advocates, surrounding the merger of their 2 Law Firms, and the default of Gloria Lucky in diarising the hearing date, are not convincing.
7. The record of the Court does not show that Gloria Lucky had conduct of the brief, to the exclusion of other Advocates for the Respondent. Her interaction with the matter was fleeting. Other Advocates as pointed out by the Advocate for the Claimant, had significant interaction with the matter. It is not right to just place blame on an Advocate who is no longer with the Respondent's Law Firm, for what appears to have been a collective failure.
8. The Court notes however, that the Claim is for a substantial amount of over Kshs.32 million. It is noted further that the Respondent has demonstrated its diligence in the past, in defending its position, and earlier on, had applied for dismissal of the Claim for want of prosecution. It is against the principle of fair administration of justice, that a Claim valued at over Kshs.32 million, is allowed or rejected, without the benefit of hearing both sides.
9. The submission by the Claimant, that the Court is functus officio, is incorrect.
10. The Court is persuaded to grant the Application, with costs to be paid by the Respondent, to the Claimant.

It is ordered:-

- a. Proceedings of 21st November 2023 are set aside, and the Claim shall be heard de novo.
- b. The Respondent shall pay to the Claimant costs of Kshs. 15,000.

DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY, AT NAIROBI, UNDER PRACTICE DIRECTION 6[2] OF THE ELECTRONIC CASE MANAGEMENT PRACTICE DIRECTIONS, 2020, THIS 30TH DAY OF AUGUST 2024.

James Rika

Judge

