



Asega v Rabadiya Construction Company Limited & another (Employment and Labour Relations Cause 1270 of 2016) [2025] KEELRC 2722 (KLR) (2 October 2025) (Ruling)

Neutral citation: [2025] KEELRC 2722 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE 1270 OF 2016**

**MN NDUMA, J
OCTOBER 2, 2025**

BETWEEN

LEONARD UMA ASEGA CLAIMANT

AND

RABADIYA CONSTRUCTION COMPANY LIMITED 1ST RESPONDENT

MR MANU 2ND RESPONDENT

RULING

1. The suit was dismissed on 11/3/2024 for non-attendance of the Claimant without any explanation. The counsel for the Claimant had opted to cease acting for the Claimant. The Claimant filed a notice of motion application dated 13/8/2024 to set aside the order of the court issued on 11/3/2024 dismissing the suit for want of prosecution and non-attendance.
2. The Applicant states that on 21/9/2023, the Claimant failed to appear in court for hearing having received a late notice from his advocate and was unable to attend court since he resides in Kitale.
3. That the non-attendance was not intentional. That initially the matter had proceeded ex-parte and the Claimant had obtained judgment in his favour but the court set aside the judgment on application by the Respondent.
4. That the Claimant should not be punished for the mistake of the advocate.
5. The application is opposed by the Respondent vide a replying affidavit sworn to by Wilson Odhiambo a manager of the Respondent who deposes that the Respondent attended court on 21/9/2023 for hearing of the suit but the suit did not proceed as the Claimant was not ready for hearing and sought adjournment of the matter which was granted. The Claimant was given last adjournment to 11th March 2024.



6. On 11/3/2024, the Respondent appeared in court and counsel for the Claimant was again not ready to proceed because the Claimant was not present. That the counsel for Claimant sought to cease acting for the Claimant and told court he would file an application accordingly.
7. The Respondent opposed the adjournment and the court dismissed the matter for non-attendance of the Claimant to prosecute his case on the grounds that no reasonable explanation had been given by the Claimant for non-attendance to prosecute the suit on the date.
8. The Respondent states that if the suit is re-opened, then the court should award thrown away costs to the Respondent in the sum of Kshs. 30,000.00 since counsel had his witness before court.
9. The court gives the Claimant the benefit of doubt, that he resided in Kitale and had received the hearing notice very late.
10. The court gives the Claimant the very last chance to prosecute his suit on condition that the pays throw away costs in the sum of Kshs.15,000.00 to the Respondent on or before the hearing date to be set on the date this ruling is delivered.

It is so ordered.

DATED AT NAIROBI THIS 2ND DAY OF OCTOBER 2025.

MATHEWS NDUMA

JUDGE

Appearance:

MM Bifwa & Co. Advocates for the Claimant

S. M. Righa & Co. Advocates for the Respondent

Mr. Kemboi – Court Assistant

