

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAIROBI
CAUSENO. E494 OF 2022

(Before D. K. N. Marete)

ELIZABETH NGINA KINYANJUI..... APPLICANT/INTENDED APPELLANT

VS

RAMA HOMES LIMITED..... RESPONDENT

RULING

This is an application dated 27th August, 2024 seeking orders for setting aside orders dismissing the suit and reinstating the same for hearing and determination on merit. It also seeks to incept the firm of MGM LLP Advocates to come on record in the place of Morgan Omusundi Law Firm.

This is grounded on the fact that this suit was dismissed for want of prosecution on 22nd January, 2024. This was occasioned by the non-appearance or attendance of the Claimant's advocate in court. The same was for mention but the Claimant's file was misplaced due to relocation of their offices in Delamere Flats, Upper hill thereby confusing the hearing date of the matter.

The Respondent opposes the application on grounds that misconduct of part of the Claimant/Applicant in missing out of action on a critical date of mentioned on 22nd January, 2024 when the matter was dismissed. It is their further case that the allegation on misplacement or loss of the file is an afterthought which should have been cured by actual court attendance on the material date. This was disrespectful, careless and a show of lack of seriousness on their part.

The Applicant is also mapped on the Case Tracking System (CTS) with dates clearly visible for them and therefore this is a flimsy excuse intended to cover up their negligence and this organisation.

Other factors delimiting the efficacy of this application comes out thus;

- In response to paragraph 6 of the Supporting Affidavit, the Claimant/Applicant never served the Respondent but instead served the email of M/S ABDULLAHI, GITARI & ODHIAMBO ADVOCATES LLP who were not record for the Respondent.
- The Respondent was never server in this matter until they received this application which is opposed.
- That the aforesaid email is an indicator that they were aware of date therefore exposing their excuse of losing the office diary with no backup does not stand.
- The application therefore becomes an afterthought.
- There no Affidavit of Service on the part of claimant and continues to mislead the court on their intend to prosecute this matter.
- This is another deliberate attempt to waste this court's time as it was done to deny the Respondent's attendance.
- This application was served direct to the Respondent as per the Affidavit of Service sworn on 8th October, 2024 which is an indicator that all this time they were aware of the appropriate email address, there being no other advocate on record for the Respondent.
- The Claimant/Applicant misled and continue to misled this court on these matters.
- Terminal dues have been paid to the claimant and the action of the court was legitimate therefore exposing the Applicant's actions as malicious, fraudulent and vexatious in the nature of their claim.
- That in all, this application is an afterthought and prejudicial to the Respondent who has met and paid terminal dues as agreed in 2020.

- The Claimant took two years to bring out this matter and continues to lazily prosecute it thereby causing un due anxiety to the Respondent.
- It is inconveniencing to the Respondent to set up a team of witnesses with a view to re-opening this undeserving claim by the Applicant.

The Respondent's case and submission overwhelms that of the Respondent. Before court is a matter that was dismally prosecuted by the Applicant leading to dismissal for want of prosecution. This application and supporting evidence do not make it any better. It comprises of a inconsistencies and falsehoods that that visible to the naked eye. It would not stand the test of accuracy and truthfulness.

I am therefore inclined to dismiss the application with orders that each party bears their costs of the same.

Delivered, dated and signed this 22nd day of October 2025.

D. K. Njagi Marete
JUDGE

Appearances;

1. Miss Gathoni instructed by MGM LLP Advocates for the Claimant/Applicant.
2. Mr. Kibira instructed by Kibira Ademi & Company Advocates for the Respondent.