Mwahendo v Muslims for Human Rights (Cause E020 of 2024)
[2025] KEELRC 2882 (KLR) (16 October 2025) (Ruling)

Neutral citation: [2025] KEELRC 2882 (KLR)

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA

CAUSE E020 OF 2024

K OCHARO, J

OCTOBER 16, 2025

BETWEEN

COLLINS CHIKO MWAHENDO ..... CLAIMANT

AND

MUSLIMS FOR HUMAN RIGHTS ..... RESPONDENT

RULING

Introduction

1. Before this court is a Notice of Motion application dated 27th February 2025 by the Claimant/ Applicant expressed to be under the provisions of section 16 of the *Employment and Labour Relations Court Act*, 2014 and rule 74(1) (a), (2) and (3) of the Employment and Labour Relations Court (Procedure) Rules, seeking setting aside of the ruling and consequential orders of this court of 11th February 2025.

2. The application is based on the grounds set out therein and the supporting affidavit sworn on 25th February 2025 by Daniel Wamotia, Counsel for the Claimant/Applicant.

3. The Respondent opposes the application through a replying affidavit of Wahid Kassim, their | Executive Director.

The Application

4. The Applicant states that a hearing date for the main suit herein was fixed in the presence of both Counsel for the Respondent and his Counsel, on 11th November 2024.

5. Unfortunately, his Counsel recorded the hearing date in his diary as 21st February 2025. He communicated this date to him.

6. It only dawned on his Counsel that the case was in court and had been dismissed for want of prosecution when he received a message from the court system JudiciaryKe. This prompted him to verify the information through the court filing portal. Indeed, it turned out that the suit had been dismissed for want of prosecution.

7. The failure of the Claimant and his Counsel to attend court was not intentional but was caused by Counsel's mistake in misdiarising the matter and conveying an incorrect date to the Claimant.

8. The application urges the court to note that on all dates the matter came up in court, save for 11th February 2020, he appeared. He is keen to prosecute his claim.

9. The application was filed without undue delay.

The Response

10. In response to the application, the Respondent asserts that the Claimant's application is vexatious, frivolous, and entirely suitable for dismissal.

11. It was incumbent upon the Claimant to ensure that he and/or his representatives followed up on events related to their case, inter alia, by checking the CTS platform.

12. As such, the Claimant cannot now seek to have the suit reinstated due to his mistakes and absence.

13. The application is unnecessarily prolonging litigation, wasting the Court's valuable judicial time, and effectively frustrating the Respondent, who must engage an Advocate to defend their interests.

Analysis And Determination

14. I have thoroughly reviewed the application, the grounds on which it is based, the supporting affidavit, and the replying affidavit, and a single question arises for consideration: Does the Claimant/ Applicant's application have merit?

15. Undoubtedly, this Court has the discretionary power to set aside any ex parte proceedings, ruling, judgment or order. However, the discretion must be exercised judiciously, not whimsically or capriciously, bearing in mind the need not to in any manner suppress a litigant's constitutional right to access justice under Article 48 of *the Constitution* of Kenya, and fair hearing under Article 50.

16. In Stecol Corporation Limited v Susan Awour Mudembo (2021) eKLR, Aburili J, stated, and I agree;

> " Article 48 of *the Constitution* guarantees every person access to justice.
>
> In addition, under Article 50(1) of *the Constitution*, every person has the right to have any dispute that can be resolved by the application of the law decided in a fair and public hearing before a court or, if appropriate, another independent and impartial tribunal or body.
>
> The ultimate goal and purpose of the justice system is to hear and determine disputes fully. It follows that no person who has approached the court seeking an opportunity to ventilate their grievance fully should be locked out."

17. However, this does not mean that applications to set aside ex parte proceedings, judgments, or rulings due to non-attendance are automatically granted. The onus is on the Applicant to prove that they were prevented from attending court for a sufficient reason. It is important to note, however, that there is no fixed definition of what constitutes a sufficient reason. What qualifies as a sufficient reason depends on the specific circumstances of each case.

18. I see it; the Claimant contends that his failure and that of his Counsel to attend court on the material day was caused by the misdiarising of the matter. Therefore, it was an unintentional action on their part.

19. I have carefully examined the material presented by the Claimant and the response from the Respondent, and two points become clear. Firstly, there is no valid reason to doubt the reason given by the Claimant. Secondly, the Respondent has not sufficiently challenged the reason as being false or provided any material that could influence this Court's decision to doubt the reason and deem it insufficient.

20. The situation that the Claimant finds himself in was caused by an inadvertent mistake of his Counsel. This is a proper matter where this court should hold that Counsel's mistake should not be visited on his client.

21. True, as contended by the Claimant, throughout all the days his matter was scheduled for various proceedings, he dutifully attended court except for the 11th of February 2025. He appears to be a litigant who has consistently been keen to pursue his case.

22. In the upshot, I find the Claimant's application meritorious; the order dismissing his claim herein is set aside, and the claim is reinstated for hearing on merit on a priority basis.

23. Each party to bear its own costs.

READ, SIGNED AND DELIVERED THIS 16TH DAY OF OCTOBER 2025.

OCHARO KEBIRA

JUDGE