



**Wachira v University Of Nairobi (Cause E209 of 2022)
[2025] KEELRC 2912 (KLR) (22 October 2025) (Ruling)**

Neutral citation: [2025] KEELRC 2912 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E209 OF 2022
DKN MARETE, J
OCTOBER 22, 2025**

BETWEEN

JEAN NJERI WACHIRA APPLICANT

AND

THE UNIVERSITY OF NAIROBI RESPONDENT

RULING

1. This is an application dated 11th November, 2024 seeking orders of reinstatement of the suit dismissed on 9th April, 2024 for non-attendance. It is grounded on the fact that despite this court’s dismissal of the matter on 9th April, 2024 for want of prosecution, the Applicant is desirous of prosecuting the suit bearing in mind that it has high chances of success.
2. The Applicant prays that the suit be reinstated, heard and determined on merit so that the claimant is not driven away from the seat of justice. Further, it is only fair and just that the matter be determined on merit upon hearing of both parties.
3. The Respondent opposes the application by their Replying Affidavit sworn on 11th July, 2025. It is their case and averment that the Claimant/Applicant through the advocate filed a notice of withdraw of the claim on or about 7th April, 2022. Through this, they wish(ed) to withdraw and or discontinue with a claim against the Respondent under Order 25 of the Civil Procedure Rules. On 9th April, 2024 when the matter came up for mention and directions, it had been withdrawn close to two years after filing by dint of the Notice of Withdrawal dated 7th April, 2022 and thus there was nothing to dismiss for want of prosecution. In any event when the cause was dismissed for want of prosecution on 9th April, 2024, the Claimant/Applicant had not taken any active steps to prosecute the matter and therefore the court’s exercise of its legitimate and discretionary action in dismissing the matter.
4. Further, the withdrawal and dismissal of the cause for want or prosecution were in order and legitimate because the Claimant was pursuing a similar case in CMELRC Cause No. E628 of 2022 and had lost



interest in ELRC Cause No. E209 as evidenced in the Notice of Withdrawal and dismissal for want of prosecution. The claim is also time barred and not capable of reinstatement as the cause of action arose between 1st October, 2017 to 8th April, 2021 and was withdrawn or struck out on 7th April, 2022 and 9th April, 2024 respectively. The Applicant should not be seen to visit its negligence and laxity on the Respondent.

5. Lastly, the Applicant has not satiated the principles for setting aside an order for dismissal of a suit for want of prosecution as exhibited in the application herein.
6. The parties ushered in their written submissions dated 8th April, 2025 and 11th April 2025 respectively for the Applicant and Respondent in which they reiterate their respective cases. The Applicant submits that the mistakes of counsel should not be visited upon a client and that the court should overlook and reinstate the application.
7. The Respondent opposes this and insists on a case of unsuitability of a case of reinstatement. They adduce various reasons as explicated above for such opposition. This court agree with the Respondent's case and submissions. The Applicant's case is not sustainable or even salvable. It does not satiate the dictates of sense and justice. This application tilts in favour of the Respondent. A case for the reinstatement of the suit is not feasible in the circumstances. It appears like this application is an afterthought on the part of the Applicant. Is it not the author of the Notice of Withdrawal dated 7th April, 2022? It is.
8. I am therefore inclined to dismiss this application and order as follows;
 - i. The costs of this application shall be borne by the Applicant.
 - ii. The costs of the application shall be borne out of the kitty of the individual counsel or law firm prosecuting this application.

DELIVERED, DATED AND SIGNED THIS 22ND DAY OF OCTOBER 2025.

D. K. NJAGI MARETE

JUDGE

Appearances;

Mr. Otieno instructed by A.K. Muchiri & Company Advocates on the Claimant/Applicant.

Mr. Omondi instructed by Fredrick Collins Omondi for the Respondent.

