



REPUBLIC OF KENYA



**KENYA LAW**  
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**Ayiega v Falcon Signs Limited (Cause 704 of 2015)  
[2025] KEELRC 141 (KLR) (30 January 2025) (Ruling)**

Neutral citation: [2025] KEELRC 141 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 704 OF 2015  
S RADIDO, J  
JANUARY 30, 2025**

**BETWEEN**

**DOUGLAS ONDIEKI AYIEGA ..... CLAIMANT**

**AND**

**FALCON SIGNS LIMITED ..... RESPONDENT**

**RULING**

1. Douglas Ondieki Ayiega (the Claimant) sued Falcon Signs Ltd (the Respondent) on 28 April 2015, alleging unfair termination of employment and breach of contract.
2. Despite service, the Respondent did not enter appearance and on 21 March 2019, the Court directed that the Cause proceed to formal proof.
3. When the Cause was called out for hearing on 24 October 2019, the Claimant and his advocate were not present. The Court dismissed the Cause for non-attendance.
4. On 5 June 2024, the Claimant filed a Motion dated 12 March 2024 seeking orders:
  - i. That the orders of this Honourable Court made on 24<sup>th</sup> October 2019 dismissing this suit be and hereby lifted and/or set aside.
  - ii. That this suit No. 704 of 2015 be hereby reinstated.
  - iii. That in the alternative this Industrial Cause No. 704 of 2015 be reinstated and transferred to the Subordinate Court in line with Gazette Notice Number 6024.
  - iv. That cost of this application be provided for.
5. The main grounds advanced in support of the Motion were that the Cause was dismissed during COVID-19 when movement was restricted and therefore the advocate could not attend Court; the Claimant stood to suffer irreparable harm if the Cause was not reinstated; the Cause raised triable issues



which fairness dictated should be heard since no prejudice would be occasioned to the Respondent and that the Court had the powers to grant the orders sought.

6. The Court took brief oral submissions from the Claimant on 18 November 2024.
7. The Court has considered the Motion, affidavit in support and the oral submissions.
8. The principles attendant to an application as the instant one requires an exercise of the Court's discretion and was set out in *Mbogo v Shah* (1979) EA 116 thus:

this discretion is intended to be exercised to avoid injustice or hardship resulting from accident, inadvertence, or excusable mistake or error, but is not designated to assist a person who has deliberately sought, whether by evasion or otherwise to obstruct or delay the cause of justice.

9. The Cause was dismissed on 24 October 2019, and the instant Motion was filed on 5 June 2024, more than 5 years after. The applicant has not disclosed when he found out the Cause was dismissed or even attempted to explain the delay in moving the Court.
10. The Claimant was seeking an exercise of the Court's discretion. He has not satisfied the Court that the discretion should be exercised in his favour.

#### **Orders**

11. The Motion dated 12 March 2024 is dismissed with costs in the cause.

**DELIVERED VIRTUALLY, DATED AND SIGNED IN NAIROBI ON THIS 30<sup>TH</sup> DAY OF JANUARY 2025.**

**RADIDO STEPHEN, MCI Arb**

**JUDGE**

Appearances

For Claimant Ong'uti & Co. Advocates

For Respondent did not enter appearance

Court Assistant Wangu

