



Alpha v Oolaiser Water & Sewerage Company Ltd & 2 others (Cause 290 of 2020) [2025] KEELRC 39 (KLR) (23 January 2025) (Ruling)

Neutral citation: [2025] KEELRC 39 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 290 OF 2020
S RADIDO, J
JANUARY 23, 2025**

BETWEEN

AUKA MOSOMI ALPHA CLAIMANT

AND

OLOOLAISER WATER & SEWERAGE COMPANY LTD 1ST RESPONDENT

MANAGING DIRECTOR OLOOLAISER WATER & SEWERAGE COMPANY LTD 2ND RESPONDENT

DICKSON NTIKOISA 3RD RESPONDENT

RULING

1. Auka Mosomi Alpha (the Claimant) sued Oolaiser Water & Sewerage Co Ltd, its Managing Director and Dickson Ntikoisa (the Respondents) on 7 July 2020, alleging unfair termination of employment.
2. The Respondents filed a Response and on 27 February 2024, the Court fixed the hearing for 8 April 2024 (the Claimant was not present despite being aware of the session). The Court directed that a hearing notice be issued.
3. None of the parties attended Court on 8 April 2024, and the Court dismissed the Cause.
4. On 31 May 2024, the Claimant filed a Motion seeking orders:
 - i. ...
 - ii. This Honourable Court be pleased to set aside the orders of the Honourable Justice Nzioki wa Makau issued on the 8th day of April 2024 for dismissal of the applicant's claim for non-attendance.
 - iii. This Honourable Court be pleased to reinstate the Plaintiff/applicant's claim herein filed in the year 2020.



- iv. This Honourable Court be pleased to extend the time within which the Plaintiff herein may set the suit herein for hearing.
 - v. This Honourable Court be pleased to give directions as to an early hearing date for the Plaintiff's claim.
 - vi. Costs of this application be provided for.
5. The grounds in support of the application were that the failure to attend the hearing on 8 April 2024 was not intentional but was caused by a system failure; the Claimant was unable to log in to the Court session as he was away on official duty in Kisii though the advocate was ready to proceed with the hearing; that an advocate holding brief was not given audience by the Court after the Cause had been dismissed; the Claimant's advocate was ready for the hearing; the Respondents would not be prejudiced and it was in the interest of justice to reinstate the Cause.
 6. The Respondents filed a replying affidavit sworn by the Human Resources Manager in opposition to the Motion on 5 November 2024. Therein, it was deponed that the hearing date was taken by consent; the Claimant's advocate had repeatedly failed to attend Court; there was no evidence of system failure and that the evidence (screenshots) produced by the Claimant was inadmissible.
 7. The Claimant's Motion could not be heard on 26 September 2024 because the Court was not sitting and on 30 September 2024, the Deputy Registrar sent an email to the parties notifying them that the Motion would be heard on 6 November 2024.
 8. The Claimant failed to attend the Court on 6 November 2024. The Respondents were represented and the Court directed the parties to file and exchange submissions.
 9. The Claimant's submissions were not on the record (should have been filed and served before 22 November 2024). The Respondents' submissions were not on record by the agreed timeline of 19 December 2024.
 10. The Court has considered the Motion, affidavits and the record and come to the view that the Motion should be declined for the following reasons.
 11. First, the Claimant asserted that an advocate Mr Nyangoro had been tasked to hold a brief and conduct the hearing but he was not given an audience. The said Mr Nyangoro has not filed any affidavit to explain what transpired on the day set for the hearing.
 12. Second, the record indicates that the Claimant's advocate failed to appear in Court severally (13 September 2023, 7 December 2023 and 27 February 2024). No explanation has been tendered for the non-attendances.
 13. Third, the Court directed the Claimant to file and serve submissions within an agreed timeframe. The submissions were not on record long after the expiry of the set timeline.
 14. The failures to attend Court and file submissions show an indolent litigant and advocate. The Court declines to exercise discretion in favour of such a litigant.

Orders

15. The Motion dated 20 May 2024 is dismissed with costs.

DELIVERED VIRTUALLY, DATED AND SIGNED IN NAIROBI ON THIS 23RD DAY OF JANUARY 2025.



RADIDO STEPHEN, MCIARB

JUDGE

Appearances

For Claimant T.O. Nyangau, Kemunto & Co. Advocates

For Respondents Miller & Miller Advocates

Court Assistant Wangu

