



**Wanjira v Hotel Ambassadeur (Miscellaneous Case 110 of 2014)  
[2025] KEELRC 38 (KLR) (17 January 2025) (Ruling)**

Neutral citation: [2025] KEELRC 38 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
MISCELLANEOUS CASE 110 OF 2014  
SC RUTTO, J  
JANUARY 17, 2025**

**BETWEEN**

**CATHERINE MILKAH WANJIRA ..... APPLICANT**

**AND**

**HOTEL AMBASADEUR ..... RESPONDENT**

**RULING**

1. Through a Notice of Motion Application dated 23<sup>rd</sup> July 2024, the Claimant/Applicant seeks an order to set aside the orders of this Court of 3<sup>rd</sup> July 2024 dismissing the suit for want of prosecution and consequently, reinstate the suit.
2. The Application is premised on the grounds on its face and is supported by the Affidavit sworn on 23<sup>rd</sup> July 2024 by the Claimant herein, Catherine Milkah Wanjira.
3. Grounds in support of the Motion are that the Claimant's Advocate failed to attend in this matter as it was on the cause list but was never called out on the three occasions it was on the list and was dealt with administratively denying the Advocate a chance to address the Court on it.
4. The Respondent has opposed the Application through the Replying Affidavit sworn on 11<sup>th</sup> October 2024 by John Kaguma Maina, its Director.
5. Mr. Kaguma deposes that he is advised by his advocates on record, which advice he verily believes to be true and correct that it is common knowledge and practice that once an advocate's matter fails to be called out in Court, the Court usually gives parties/ advocates the platform after going through the entire cause-list to raise any questions and/ or clarifications needed. That as such, the Applicant's reason is inexcusable which the Court ought not to entertain.



6. He further deposes that it is clear that during the three occasions when the matter came up in Court, the Applicant, if indeed was present in Court, failed to raise any issue in order to indulge its interests in the matter.
7. He is further advised by his advocates on record, which advice he verily believes to be true and correct, that equity aids the vigilant and not the indolent. That the Applicant has clearly slept on her right to access to justice for close to 10 years and appears only after the Honourable Court has exercised its duty and discretion by dismissing her Claim for want of prosecution.
8. According to Mr. Kaguma, the conduct of the Applicant herein, in filing the matter before this Honourable Court and failing to attend Court more than three times for purposes of prosecuting the matter only to appear in Court with a frivolous and vexatious Application seeking a second bite at the cherry, is a clear mockery and an abuse of the Court process.
9. It is Mr. Kaguma's assertion that the Application dated 23<sup>rd</sup> July, 2024 is deprived of reason and substance and only meted with excuses with blame directed to the Court. He is advised by his advocates on record which advice he verily believes to be correct that he who comes to equity must come with clean hands. That from the face of the Application filed herein, the Applicant has not (sic) approached this Court with deceit and untruthfulness.
10. In response to the Respondent's Replying Affidavit, the Claimant filed a Supplementary Affidavit sworn on 23<sup>rd</sup> October 2024 in which she avers that her matter was skipped by the Court when she was present with her advocate who endeavored to address the Court and was told that all matters skipped or placed aside will be dealt with after the call over. However, after the call-over, the Court went straight to a hearing and never mentioned it again.
11. She further deposes that on the 8<sup>th</sup> of October when the matter was set to be heard, before Hon Justice Abuodha, the matter could not take off. That the Court was informed by Mr. Kiche who held brief for Mr. Muchemi that Mr. Muchemi could not proceed as he had an election Petition in Kisii.
12. That again on the 20<sup>th</sup> of March 2017, before Hon Lady Justice Monica Mbaru, the Claimant was ready but Mr. Kalwa holding brief for Mr. Muchemi informed the Court that Mr. Muchemi could not proceed since he was in ELC No. 33 of 2016 in Machakos.
13. She further avers that on the 9<sup>th</sup> of December, when she was ready to proceed, the Court was informed that Mr. Muchemi was unwell and could not proceed.
14. That on the 5<sup>th</sup> of June 2020, when they were ready to proceed, the Court was informed that the Respondent was not ready since it did not its witness in Court.

### **Submissions**

15. The Application was canvassed by way of written submissions. Both parties complied and the Court has considered their respective submissions.

### **Analysis and Determination**

16. I have considered the Application, the Respondent's Replying Affidavit together with the rival submissions and to my mind, the singular issue arising for determination is whether the Court should set aside its orders of 3<sup>rd</sup> July 2024, dismissing the Claimant's suit for want of prosecution and consequently, reinstate the said suit.



17. By its very nature, this is a matter that calls for the exercise of the Court's discretion. As was stated in the case of *Shah vs Mbogo* (1979) EA 116, this discretion has to be exercised judiciously and is intended to avoid injustice or hardship resulting from inadvertence or excusable mistake or error but should not cause injustice to the opposite party. Further to the foregoing, the party seeking the Court's favour ought to adduce sufficient and plausible reasons to warrant the Court to set aside the order of dismissal and subsequently reinstate the suit.
18. The record bears that the last date the parties appeared in Court prior to the dismissal of the suit for want of prosecution was 16<sup>th</sup> December 2019. On the said date, the Court scheduled the matter for hearing on 27<sup>th</sup> February 2020.
19. However, there is no indication on record as to what transpired in Court on the said 27<sup>th</sup> February 2020.
20. Subsequently, the matter came up again on 21<sup>st</sup> July 2020, during which both parties were not present in court. As such, the Court directed that a further date be taken at the Registry.
21. From the record, there was no activity on the file until 5<sup>th</sup> June 2024, when the Court caused a Mention Notice to be issued to the Claimant through her Advocate's disclosed and known email address being [advocatesvslempaa@gmail.com](mailto:advocatesvslempaa@gmail.com). Through the said Notice, the Claimant was notified of the mention slated for 12<sup>th</sup> June 2024 and was asked to serve the Respondent.
22. On 12<sup>th</sup> June 2024, the matter was placed before the Court's Deputy Registrar, and owing to the absence of both parties, the Court directed that a Notice to Show Cause be issued to the parties as to why the suit should not be dismissed for want of prosecution.
23. Subsequently, a Notice to Show Cause dated 25<sup>th</sup> June 2024 was issued and dispatched electronically through the Claimant's Advocate's disclosed and known email addresses being [advocatesvslempaa@gmail.com](mailto:advocatesvslempaa@gmail.com).
24. When the Notice to Show Cause came up on 3<sup>rd</sup> July 2024, both parties were absent from Court hence the suit was dismissed for want of prosecution.
25. From the foregoing chronology of events, it is evident that the Claimant made the last appearance in Court on 16<sup>th</sup> December 2019 through her Advocate and thereafter, went to slumber only to be jolted by the dismissal of the suit. This was almost four years down the line.
26. It is also worth pointing out that the Claimant's Advocates have not denied receiving the Mention Notice and the Notice to Show Cause dated 5<sup>th</sup> June 2024, and 25<sup>th</sup> June 2024 respectively.
27. Further to that, the Claimant has not indicated the reason for her failure to attend court on 12<sup>th</sup> June 2024 and 3<sup>rd</sup> July 2024 when the matter came up mention and Notice to Show Cause respectively.
28. What's more, the Claimant has not explained why she failed to take steps to prosecute the suit for a period of almost four years prior to the Notice to Show Cause being issued. If anything, it is evident that despite the Mention Notice and the Notice to Show Cause, the Claimant was not moved. With tremendous respect to the Claimant, this action does not depict a diligent litigant hence is undeserving of this Court's discretion.
29. For the foregoing reasons, I am not convinced that there are valid reasons for the Court to set aside the dismissal orders made on 3<sup>rd</sup> July 2024.
30. In total sum, the Court finds the Application dated July 23, 2024 to be lacking in merit hence the same is dismissed with no orders as to costs.



DATED, SIGNED AND DELIVERED AT NAIROBI THIS 17<sup>TH</sup> DAY OF JANUARY 2025.

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**STELLA RUTTO**

**JUDGE**

In the presence of:

Mr. Juma for the Claimant/Applicant

Mr. Makaya for the Respondent

Millicent Court Assistant

Order

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court had been guided by Article 159(2) (d) of *the Constitution* which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the Civil Procedure Act (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

**STELLA RUTTO**

**JUDGE**

