



**Wamalwa v Medina Schools Limited (Cause 682 of 2018)
[2025] KEELRC 552 (KLR) (27 February 2025) (Ruling)**

Neutral citation: [2025] KEELRC 552 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 682 OF 2018
S RADIDO, J
FEBRUARY 27, 2025**

BETWEEN

SARIFU WAMALWA CLAIMANT

AND

MEDINA SCHOOLS LIMITED RESPONDENT

RULING

1. Sarifu Wamalwa (the Claimant) sued Medina Schools Ltd (the Respondent) on 9 May 2018, alleging unfair termination of employment and breach of contract.
2. On 5 June 2023, the Deputy Registrar set the Cause for hearing on 5 July 2023.
3. When the Cause came up for hearing on the scheduled date, the Claimant's advocate applied for what she called a last adjournment. The reason for the application was that the advocate had not managed to get in touch with the Claimant.
4. The Court granted the request and ordered that would be the last adjournment.
5. On 31 July 2023, the Court fixed the hearing for 21 November 2023. On this date, the Respondent applied for leave to amend the Response. An Amended Response and Counterclaim was filed on 7 December 2023.
6. When the Cause was called for hearing on 21 November 2023, the Claimant's advocate applied for an adjournment again. The reason, he could not reach the Claimant.
7. The Court, again, granted a last adjournment with the hearing set for 30 January 2024.
8. The Claimant and advocate did not attend the hearing on 30 January 2024, and the Court dismissed the Cause with costs to the Respondent. The Respondent had attended the session.
9. On 30 January 2024, the Claimant filed a Motion seeking orders:



- i. ...
 - ii. That the Honourable Court be pleased to reinstate the suit herein.
 - iii. That the Honourable Court be pleased to issue any further order as it deems fit.
10. The grounds in support of the Motion were that on the material day, the advocate had waited in the Court's virtual lobby but was not admitted; when the advocate was eventually admitted, he found the Cause already dismissed for non-attendance and that the failure to attend the hearing was not deliberate but inadvertent.
 11. The Respondent filed Grounds of Opposition on 24 September 2024.
 12. In the Grounds, the Respondent contended that the advocate and Claimant had not tendered evidence that they had waited in the Court's virtual lobby; the Claimant had consistently failed to attend the Court; the Court did not have jurisdiction because the Claimant was earning below Kshs 80,000/- monthly and that the Respondent had archived its files and could no longer access crucial documents.
 13. The Court gave directions on the Motion on 20 January 2025,
 14. On 6 February 2025, the Respondent filed a replying affidavit. No leave was sought and the Court expunges the affidavit from the record.
 15. The Claimant's submissions were not on record by the agreed timeline of 31 January 2025. The Respondent filed its submissions on 7 February 2025.
 16. The Court has considered the record, Motion, affidavit in support and submissions.
 17. The record indicates an indolent Claimant. Twice he was not ready to prosecute his claim. Twice the Court granted him a last adjournment.
 18. The Claimant's indolence is also seen from the fact that despite being directed to file and serve submissions by an agreed timeline, he failed to comply with the direction.
 19. The Claimant was seeking an exercise of the Court's discretion. His conduct does not favour exercising the discretion in his favour.

Orders

20. Flowing from the above, the Court dismisses the Motion dated 30 January 2024 with costs to the Respondent.

DELIVERED VIRTUALLY, DATED AND SIGNED IN NAIROBI ON THIS 27TH DAY OF FEBRUARY 2025.

RADIDO STEPHEN, MCIARB

JUDGE

Appearances

For Claimant Odero-Olonde & Co. Advocates

For Respondent Wesonga Mutembei & Kigen Advocates

Court Assistant Wangu

