



REPUBLIC OF KENYA



**KENYA LAW**  
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**Ambayo v Namuraka (Cause E299 of 2023)  
[2025] KEELRC 496 (KLR) (20 February 2025) (Ruling)**

Neutral citation: [2025] KEELRC 496 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E299 OF 2023  
S RADIDO, J  
FEBRUARY 20, 2025**

**BETWEEN**

**CHARLES MOI AMBAYO ..... CLAIMANT**

**AND**

**SADIA NAMURAKA ..... RESPONDENT**

**RULING**

1. On 7 February 2024, the Court directed that the Cause be mentioned for certification on 6 March 2024. The advocate for Charles Moi Ambayo (the Claimant) was present.
2. The advocate did not attend Court on 6 March 2024, and the Court directed that the parties move the Court appropriately.
3. On 3 April 2024, the Deputy Registrar issued a Notice indicating that the Cause would be mentioned on 2 May 2024.
4. However, on 19 April 2024, the Deputy Registrar sent out an email to the Claimant (and the parties) that the Cause had been rescheduled to 22 April 2024 because the Court would not sit from 23 April 2024 to 3 May 2024.
5. The Claimant did not attend the Court on 22 April 2024, and the Court directed that a Notice to Show Cause issue with a return date of 27 May 2024.
6. The Deputy Registrar issued and served a Notice to Show Cause through the email address psemekia11@gmail.com.
7. The Claimant did not attend the Court, and the Cause was dismissed.
8. The dismissal prompted the Claimant to file a Motion dated 12 August 2024 seeking orders:



- i. That the Honourable Court be pleased to alter, vary, review and or set aside its orders dismissing the Claimant/applicant's suit for want of prosecution.
  - ii. That the Claimant/applicant's suit Employment and Labour Cause No E299 of 2023 be and is hereby ordered reinstated for hearing and determination.
  - iii. That the costs of this application be in the cause.
  - iv. That any other or further orders that this Honourable Court may deem fit to grant.
9. The main grounds in support of the Motion were that the Court had given notice that the Cause would be mentioned on 2 May 2024, but a notice was issued that the Court would not sit on that day and fresh dates would be given; that the Claimant did not get any new notice but noticed from the CTS that the Cause had been dismissed without any proper notice or service of such notice and that the interest of justice required the reinstatement of the Cause.
  10. When the Motion came up for hearing on 7 October 2024, the Court directed the Claimant to serve the Respondent.
  11. The firm of Anne Babu & Co. Advocates filed a Notice of Appointment to act for the Respondent on 6 November 2024 and a replying affidavit on 14 November 2024.
  12. In the affidavit, the Respondent stated that the Claimant had not stated her name correctly; Notice of Summons had not been served; the Claimant had not taken steps to prosecute the Cause; proper notices had been served upon the Claimant; the Cause sought to be reinstated had been supported by unsigned verifying affidavit and the Cause had been filed outside the 3-years prescribed by section 90 of the *Employment Act*.
  13. The Respondent also filed a Notice of Preliminary Objection on 18 November 2024, contesting the Court's jurisdiction to entertain the Cause because it was filed out of the prescribed time of 3 years.
  14. On 19 November 2024, the Court directed the parties to file and exchange submissions.
  15. The Claimant's submissions were not on record by the agreed timeline of 30 November 2024. The Respondent filed submissions on 19 December 2024.
  16. The Court has considered the Motion, affidavit, submissions and record and finds the Motion devoid of merit for the following reasons.
  17. One, the Memorandum of Claim, which was dismissed, had not been signed by the Claimant's advocate. The verifying affidavit was also not sworn thus there was no valid Cause before the Court in the first place.
  18. The attempt by the Claimant to file a signed Memorandum of Claim on 17 November 2024 is of no legal consequence.
  19. Two, despite stating that a Notice to Show Cause was not served, the record indicates that the Deputy Registrar served the Claimant with the Notice through the email address psemekia11@gmail.com on 7 May 2024.
  20. Three, the Claimant conveniently failed to disclose the date of dismissal from employment in the Memorandum of Claim, which was dismissed, thus giving credence to the assertion that the Cause had been filed out of the prescribed 3-years.



21. Four, the failure of the Claimant to file and serve submissions is indicative of indolence or lack of diligence in prosecuting of his cause.
22. Lastly, it would be an exercise in futility to allow the Motion, considering that on the face of the dismissed Memorandum of Claim, the Court lacked first-instance pecuniary jurisdiction over the dispute.

### **Orders**

23. From the above, the Motion dated 12 August 2024 is dismissed with costs to the Respondent.

**DELIVERED VIRTUALLY, DATED AND SIGNED IN NAIROBI ON THIS 20<sup>TH</sup> DAY OF FEBRUARY 2025.**

**Radido Stephen, MCI Arb**

### **Judge**

Appearances

For Claimant Wakiaga Semekia & Co. Advocates

For Respondent Anne Babu & Co. Advocates

Court Assistant Wangu

