



**Matheka v Kenyatta National Hospital (Cause E241 of 2021)  
[2025] KEELRC 897 (KLR) (20 March 2025) (Ruling)**

Neutral citation: [2025] KEELRC 897 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E241 OF 2021  
S RADIDO, J  
MARCH 20, 2025**

**BETWEEN**

**JULIUS NZUKI MATHEKA ..... CLAIMANT**

**AND**

**KENYATTA NATIONAL HOSPITAL ..... RESPONDENT**

**RULING**

1. The Cause herein was dismissed on 30 May 2024 because the Claimant failed to show cause why it should not be dismissed.
2. On 27 June 2024, the Claimant filed a Motion seeking orders:
  - i. That this Honourable Court be pleased to set aside its own orders made on 30<sup>th</sup> May 2024 dismissing the applicant's suit.
  - ii. That the Honourable Court be pleased to extend time within which the applicant/Claimant may set the suit for hearing and determination.
  - iii. That the costs of this application be provided for
3. The grounds supporting the Motion were that the advocate on record failed to attend the hearing and that this was a mistake which ought not to be visited on the applicant.
4. The applicant urged that the Respondent would not be prejudiced if the orders sought were granted.
5. The Respondent filed Grounds of Opposition to the Motion on 12 August 2024, contending that the Claimant had failed to take steps to prosecute the Cause for over 1-year; the delay was inordinate as the cause of action accrued in 2020 and the Respondent would not be able to obtain witnesses and that the Motion lacked merit and was bad in law.



6. When the parties appeared in Court on 25 July 2024, the Court directed the filing and exchange of responses and submissions within set timelines.
7. The Claimant did not file the submissions and the Court gave new timelines for the filing and exchange of submissions.
8. The Claimant filed his submissions on 7 February 2025, and the Respondent on 14 February 2025.
9. The Court has considered the record, Motion, affidavit in support, Grounds of Opposition and submissions.
10. The Claimant relied on Ham v SOS (2021) eKLR to urge that a mistake of an advocate should not be visited on the client.
11. On the other hand, the Respondent cited Okogo v Omoro & Ar (2022) KECA 110 KLR to contend that the mistake of an advocate would only be excused if the client was diligent. The Respondent contended that the Claimant had failed to appear in Court on 3 previous occasions.
12. The record indicates that on 5 March 2024, the Claimant's advocate failed to appear before the Court despite being aware of the Court session. The Court directed the parties to take dates in the registry.
13. On 3 April 2024, the Deputy Registrar emailed the parties asking them to appear before the Court on 2 May 2024 for directions.
14. However, on 19 April 2024, the Deputy Registrar notified the parties that the mention had been rescheduled from 2 May 2024 to 22 April 2024 because the Judge would be away on the former date.
15. None of the parties attended 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.
16. The Notice to Show Cause was served through emails of the parties on 7 May 2024.
17. The Court sat on 31 May 2024 and dismissed the Cause.
18. The Claimant thereafter filed the Motion under consideration.
19. On 3 July 2024, the Duty Court directed the Claimant to serve the Motion ahead of further directions on 17 July 2024. The Claimant did not serve and sought for more time.
20. The Claimant has not disclosed in the supporting affidavit how he knew the file would be coming up on 31 May 2024 and not 27 May 2024. The Respondent has also not made any indication whether it received a notice of change of the dates from the Court.
21. The record does not show how and why the date for the Notice to Show Cause was altered from 27 May 2024 to 31 May 2024. There is also no indication of how and whether the parties were notified.
22. The Court will give the Claimant a benefit of doubt.

### **Orders**

23. The order dismissing the Cause is vacated with directions that the Cause be progressed to a hearing.

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

**RADIDO STEPHEN, MCIARB**

**JUDGE**



Appearances

For Claimant Mochere & Co. Advocates

For Respondent Omulele & Tollo Advocates

Court Assistant Wangu

