



**Wanyembi v Council, University of Kabianga (Cause 50 of 2019)
[2025] KEELRC 1172 (KLR) (25 April 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1172 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KERICHO
CAUSE 50 OF 2019**

J RIKA, J

APRIL 25, 2025

BETWEEN

GREGORY WABUKE WANYEMBI CLAIMANT

AND

THE COUNCIL, UNIVERSITY OF KABIANGA RESPONDENT

RULING

1. The Court [Hon. Byram Ongaya J] directed on 3rd March 2020, that the Notice of Summons and the Statement of Claim, be served upon the Respondent within 7 days.
2. In default, the Claim would be deemed to have abated.
3. The Claim was filed on 17th September 2019, and Summons issued from the Court on 30th September 2019.
4. The Claimant's Advocate was present, when the orders of 3rd March 2020 issued.
5. It is not clear why the Claimant did not serve his Pleadings, as directed by the Court. On 16th July 2020, the Hon. Deputy Registrar confirmed that there was no service, and recorded that the Claim had abated, in accordance with the orders issued by the Judge, on 3rd March 2020.
6. The Claimant filed an application dated 16th September 2024, asking the Court to review and set aside the orders made on 3rd March 2020, and reinstate the Claim for full hearing.
7. The application is founded on the affidavit of the Claimant, sworn on 16th September 2024.
8. He states that the Claim was scheduled for hearing on 3rd March 2020. His Advocate did not inform him of the scheduled hearing. The Claim was dismissed for non- attendance / non-prosecution. He was not aware of its dismissal, until he visited the Registry some time close to the date of his application



- [16th September 2024], when he was informed by the Registry that his Claim was dismissed way back in 2020.
9. He states that he has now engaged a different Law Firm, and is ready to prosecute his Claim.
 10. The Respondent relies on the affidavit of its Vice-Chancellor, Professor Eric Koech, sworn on 10th December 2024.
 11. He states that the Respondent was not aware about the Claim, until it was served with the current application.
 12. From the record, Summons issued on 30th September 2019. They were valid for 6 months, under Rule 11 of the *E&LRC [Procedure] Rules, 2016*.
 13. The Claim was mentioned on 30th January 2029 when the Court directed the Claimant to effect service, within 21 days. He did not comply.
 14. On 3rd March 2020, he still had not served, and was given an additional 7 days, to serve. He did not do so, and as had been ordered, the Claim was deemed to have abated.
 15. The Court, did not dismiss the Claim as stated by the Claimant, and his application is misplaced. The Respondent prays that the application is dismissed.
 16. Parties agreed to have the application considered and determined on the strength of their affidavits and submissions. They confirmed filing and exchange of submissions, at the last mention, on 6th March 2025.

The Court Finds: -

17. The Claimant's current Advocates, were represented in Court, on 30th January 2020, when the Hon. Court noted that Summons had not yet been served, and directed the Claimant to serve the Respondent, within 21 days.
18. They were similarly represented, when the Claim was mentioned on 3rd March 2020, and extension of 7 days granted by the Court, for the Claimant to serve the Respondent.
19. It is not true that there was a different firm of Advocates, who failed to inform the Claimant that the Claim was due for hearing on 3rd March 2020.
20. In fact, the law firm of Nakitare, representing the Claimant, had asked the Court, on 30th January 2020, to schedule the Claim for hearing.
21. The Court found that there was no evidence of service by the Claimant, upon the Respondent, and gave the Claimant timelines, within which to effect service, which the Claimant dishonoured.
22. If his current Advocates were on record from 30th January 2020, it is not plausible that the Claimant only learnt about abatement of his Claim in 2024, when he visited the Registry. Was he not in communication with his current Advocates, from the year 2020?
23. It appears that he also cannot shift blame to his previous Advocates, for failure to serve the Respondent. There was a whole 6 months to serve the Respondent, and the previous Advocates were not shown to have been representing him, throughout the 6 months.
24. The Claim was not dismissed for non-attendance or non-prosecution; it abated for non-service of the Notice of Summons and the Statement of Claim.



25. The Claimant was in abuse of the process of the Court, by filing a Claim, and failing to serve within the timelines given by the [E&LRC \[Procedure\] Rules, 2016](#), and as directed repeatedly by the Court. Secondly, he abused the process of the Court, by seeking to have a hearing date of a Claim the Respondent was not aware about. Lastly, he is in abuse of the process of the Court, by seeking reinstatement of a Claim which abated, and which he claims to have been dismissed for his non-attendance or non-prosecution.

It Is Ordered: -

- a. The application filed by the Claimant dated 16th September 2024 is declined.
- b. The Claim shall be deemed to have abated, as earlier ordered in the year 2020.
- c. The file shall be marked as closed.
- d. No order on the costs.

DATED, SIGNED AND DELIVERED ELECTRONICALLY AT KERICHO, THIS 25TH APRIL 2025.

JAMES RIKA

JUDGE

