



**Malombe v Mombasa Maize Millers (NBI) Limited (Miscellaneous Application E154 of 2021) [2025] KEELRC 1152 (KLR) (24 April 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1152 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
MISCELLANEOUS APPLICATION E154 OF 2021**

**L NDOLO, J**

**APRIL 24, 2025**

**BETWEEN**

**JACOB MWEMA MALOMBE ..... APPLICANT**

**AND**

**MOMBASA MAIZE MILLERS (NBI) LIMITED ..... RESPONDENT**

**RULING**

1. On 7<sup>th</sup> November 2022, I dismissed the Applicant's Miscellaneous Application, dated 27<sup>th</sup> August 2021, for want of prosecution. Thereafter, the Applicant filed a Notice of Motion dated 20<sup>th</sup> November 2022, seeking orders to set aside the dismissal order.
2. The present application is supported by the Applicant's own affidavit and is based on the following grounds:
  - a. That the Applicant's Advocates wrote to the Deputy Registrar on 5<sup>th</sup> October 2021, asking for a hearing date for the Notice of Motion dated 27<sup>th</sup> August 2021;
  - b. That in response, the Applicant's Advocates were informed by an email from the Court dated 6<sup>th</sup> October 2021, that the file would be retrieved and they would receive an email containing a link and date for hearing;
  - c. That the Advocates acknowledged the contents of the email by letter dated 7<sup>th</sup> October 2021, after which they received another email dated 19<sup>th</sup> October 2021, notifying them that the waiting period would be as short as possible;
  - d. That on 19<sup>th</sup> January 2022, the Applicant's Advocates wrote another letter to the Deputy Registrar requesting for a hearing date of the application;
  - e. That the Applicant's Advocates received an email dated 18<sup>th</sup> February 2022, informing them that the date fixing session was scheduled for 23<sup>rd</sup> February 2022, but it did not happen;



- f. That the date fixing session was rescheduled to 1<sup>st</sup> March 2022 but it also did not happen;
  - g. That on 18<sup>th</sup> May 2022, the Applicant's Advocates wrote another letter to the Deputy Registrar requesting that a hearing date be allocated, with a reminder sent on 18<sup>th</sup> August 2022, but there was no response;
  - h. That the delay in this matter lies squarely with the Court Registry and not the Applicant or his Advocates;
  - i. That the matter was scheduled for notice to show cause on 7<sup>th</sup> November 2022;
  - j. That there were internet connectivity issues preventing the Applicant from logging in;
  - k. That the Respondent will not suffer any prejudice if the application is reinstated;
  - l. That the Applicant will continue to suffer prejudice if the orders sought are not granted.
3. The Respondent filed Grounds of Opposition dated 31<sup>st</sup> May 2023, stating as follows:
- a. That the application does not meet the legal requirements of the provisions of the law under which it is brought;
  - b. That the Notice to Show Cause was duly issued and served upon the parties and no reason has been advanced why the Applicant and his Counsel were not in court to show cause why the matter should not be dismissed for want of prosecution;
  - c. That the Court does not have discretion to set aside an order for dismissal of a suit for want of prosecution;
  - d. That there was sufficient internet connectivity at the court and matters scheduled for the day proceeded to completion of the cause list.
4. Rule 43 of the Employment and Labour Relations Court (Procedure) Rules sets out the following procedure for dismissal of suits for want of prosecution:
- subPARA 43.
- SUBPARA (1)
- In any suit in which no application has been made in accordance with rule 31 or no action has been taken by either party within one year from the date of its filing, the Court may give notice in writing to the parties to show cause why the suit should not be dismissed and, if no reasonable cause is shown to its satisfaction, may dismiss the suit.
- SUBPARA (2)
- If reasonable cause is given to the satisfaction of the Court, it may make such orders as it thinks fit to obtain the expeditious hearing and determination of the suit.
- SUBPARA (3)
- Any party to the suit may apply for dismissal as provided in sub- rule (1).
- SUBPARA (4)
- The Court may dismiss the suit for non-compliance with any direction given under this rule or rule 31.



5. The principles to be taken into account in issuing an order for dismissal of a suit for want of prosecution were established in *Ivita v Kyumbu* [1984] eKLR 441 as follows:

“The test is whether the delay is prolonged and inexcusable, and, if it is, can justice be done despite such delay? Justice is justice to both the Plaintiff and Defendant; so both parties to the suit must be considered...”

6. The application which the Applicant seeks to reinstate was dismissed on 7<sup>th</sup> November 2022, pursuant to a Notice to Show Cause issued by the Court on 8<sup>th</sup> September 2023, which the Applicant acknowledges having received, but to which he did not respond.

7. Instead of the Applicant explaining to the Court why he failed to respond to the Notice to Show Cause, he has gone on a tangent blaming the Court Registry for all manner of alleged lapses.

8. Further, he makes a general statement, without any particulars, regarding lack of internet connectivity on 7<sup>th</sup> November 2022, when he was required to appear in court, to defend his matter from being dismissed for want of prosecution.

9. In the circumstances, I find no reason to move me to exercise discretion in favour of the Applicant.

10. The application dated 20<sup>th</sup> November 2022 is therefore declined with an order that each party will bear their own costs.

11. It is so ordered.

conclusions

**DELIVERED VIRTUALLY AT NAIROBI THIS 24<sup>TH</sup> DAY OF APRIL 2025**

**LINNET NDOLO**

**JUDGE**

Appearance:

Ms. Githinji h/b for Ms. Kethi Kilonzo for the Applicant

Mr. Muma for the Respondent

