



**Ngunyi v Kenya Nut Company Limited (Cause 45 of 2012)
[2024] KEELRC 243 (KLR) (15 February 2024) (Ruling)**

Neutral citation: [2024] KEELRC 243 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 45 OF 2012
L NDOLO, J
FEBRUARY 15, 2024**

BETWEEN

MARGARET MUTHONI NGUNYI CLAIMANT

AND

KENYA NUT COMPANY LIMITED RESPONDENT

RULING

1. The application before me is the one dated 15th December 2022, by which the Claimant seeks review of the order made by Makau J on 25th September 2018, dismissing the Claimant’s claim for want of prosecution.
2. The application is supported by an affidavit sworn by the Claimant’s Counsel, Mildred Gakoi and is based on the following grounds:
 - a. The suit was erroneously dismissed by Makau J on 25th September 2018 for want of prosecution;
 - b. When the matter came up for hearing on 25th September 2018, Mr. Nyamisi, Advocate holding brief for the Claimant’s Advocate sought an adjournment as the Claimant’s Counsel was indisposed;
 - c. The Court declined to grant an adjournment and instead erroneously dismissed the matter for want of prosecution;
 - d. The Claimant is very interested in prosecuting the matter;
 - e. The inability of the Claimant’s Counsel to proceed with the matter on the hearing dated was not deliberate;



- f. The Claimant's amended Memorandum of Claim raises triable issues which ought to be ventilated through trial;
 - g. No prejudice will be occasioned to the Respondent if the application is allowed;
 - h. It is in the interest of justice that the application is allowed.
3. The Respondent opposes the application by a replying affidavit sworn by its Counsel, Janice Akinyi on 10th November 2023.
 4. Counsel states that the application though dated 15th December 2022 was not served on the Respondent until 16th October 2023.
 5. She depones that the Respondent would be prejudiced if the suit is reinstated as it is no longer in possession of documents necessary to defend the claim.
 6. In her affidavit in support of the application, the Claimant's Counsel gave a chronology of court events regarding the claim. She however missed out a crucial aspect; and that is to explain the delay in bringing the present application.
 7. It is on record that the claim was dismissed on 25th September 2018 in the presence of Counsel for both parties. The question must therefore be asked why it took more than four (4) years for the Claimant to move the court for reinstatement of her case.
 8. In the written submissions filed on behalf of the Respondent, reference was made to the decision in *Amina Karama v Njagi Gachangua & 3 others* [2020] eKLR where it was affirmed that delay defeats equity.
 9. With particular focus on employment matters, delay has the potential to cause injustice as employment records have a limited lifespan and witnesses at the work place are susceptible to natural attrition. Once a claim against an employer has been dismissed, a reasonable employer will close the file and move on. It would therefore be an injustice to resuscitate such a claim more than 4 years down the line.
 10. The delay in bringing this application is long and in the absence of any explanation, is inordinate and unreasonable.
 11. I therefore have no basis upon which to exercise discretion of the Court in favour of the Claimant. Her application dated 15th December 2022 is consequently disallowed, her claim stands dismissed and the file is closed.
 12. Each party will bear their own costs.
 13. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 15TH DAY OF FEBRUARY 2024

LINNET NDOLO

JUDGE

Appearance:

Ms. Mideva for the Claimant

Ms. Akinyi h/b for Mr. Macharia for the Respondent

