



REPUBLIC OF KENYA



Odoyo v Invesco Assurance Company Limited (Employment and Labour Relations Cause 672B of 2014) [2024] KEELRC 605 (KLR) (14 March 2024) (Ruling)

Neutral citation: [2024] KEELRC 605 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE 672B OF 2014**

**MN NDUMA, J
MARCH 14, 2024**

BETWEEN

ELVIS ODHIAMBO ODOYO CLAIMANT

AND

INVESCO ASSURANCE COMPANY LIMITED RESPONDENT

RULING

1. The suit was filed on 25/4/2014. The matter eventually proceeded to formal proof on 21/3/2023 the respondent having failed to defend the suit. Judgement was reserved for 20/7/2023.
2. This application was filed on 6/7/2023 seeking for an order in the following terms:-
 1. Spent
 2. That this Honourable Court be pleased to arrest the judgment and/or prevent delivery of judgment in this matter that is scheduled to be delivered on 20th July 2023 pending the hearing and determination of the application.
 3. That this Honourable Court be pleased to re-open the case and grant the respondent/applicant an opportunity to be heard by allowing the respondent/applicant to examine their witnesses in chief, re-examine them and cross-examine the claimant/respondent witnesses.
 4. That the costs of this application be in the cause.
3. The application is premised on grounds 1 to 9 set out on the face of the application and buttressed in the supporting affidavit of one Grace Njeri the acting Human Resource Manager of the applicant.
4. The applicant explains that he was unable to defend the suit due to management and financial challenges that affected the modus operandi of the company. That via Gazette Notice No. 5488 dated 13/5/2022 the company was faced with imminent threat of liquidation. That on 7/11/2022,



the applicant's former counsel on record made an application to cease acting which application was allowed on 19/1/2023.

5. That applicant was unable to give instructions to the said firm of advocates due to the financial challenges which led to the company's closure in February 2023 and was able to re-open a month later in March 2023.
6. That the applicant lost track of the hearing date which was scheduled for 21/3/2023 and subsequent mention on 6/6/2023 when the judgment date was given.
7. That the applicant has a right to be heard before judgment is delivered hence the application.
8. The application is opposed vide a replying affidavit of the claimant who deposes that the application is frivolous, lacks merit and is an abuse of the court process.
9. That the applicant has not demonstrated sufficient cause to have the application granted to re-open the case and allow the respondent to defend the case.
10. That the respondent was physically served with the hearing notice scheduled for 21/3/2023 on 24/1/2023 and affidavit of service sworn on 24/1/2023 was filed before court.
11. The previous hearing dates scheduled for 31/1/2023 was duly served on 17/11/2022 and affidavit of service sworn on 17/11/2022 duly filed.
12. Other previous dates scheduled before the court and served were on 24/1/2020, 25/9/2019 and 8/8/2015 and so the applicant was well aware that the suit was pending hearing and determination for a long time.
13. That no justifiable reason explaining the failure for the respondent to attend court has been advanced by the respondent. That the respondent aims only at subvert the cause of justice by subjecting the suit to inordinate delay.
14. That there is no justification for the court to exercise its discretion in favour of the applicant.
15. That the application be dismissed with costs.

Determination

16. The court has considered the deposition by the parties and the submissions filed subsequently thereto.
17. The applicant relies on article 50 of *the Constitution* which provides:-
 - (1) Every person has a right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a court, or if appropriate, another independent and impartial tribunal or body."
18. This provision cuts both ways and protects all parties to be granted opportunity before court and that right not to be subverted by inordinate delay caused by a party to the dispute.
19. That in *Wachira Karani versus Bildad Wachira* (2011) eKLR, cited in *David Gicheru versus Gichehe Forms Limited and another* [2020] eKLR, the court held:
20. The fundamental duty of the court is to do justice between the parties. It is in turn, fundamental to that duty, those parties should each be allowed a proper opportunity to put their case upon the merits of the matter."



21. The court has closely perused the record in this matter and is satisfied that the applicant was given sufficient opportunity to prosecute its defence in this matter but had failed time and again.
22. This application seeking to arrest the pending judgement is not supported by any viable explanation as to why the applicant failed to attend court to defend the suit.
23. The court is of the finding that any further delay in this matter as a result of the indolence by the applicant will only lead to a denial of justice to the claimant who has been waiting to have the case heard and determined since the year 2014.
24. Accordingly, there being no justifiable reason why the judgment should be arrested, the application is dismissed with costs.
25. Judgment of the court to be delivered on the date to be allocated upon delivery of the ruling.

DATED AT NAIROBI THIS 14TH DAY OF MARCH 2024

MATHEWS NDERI NDUMA

JUDGE

Appearance:

Mr. Jaoko for claimant

Mr. Muma Kanjama for respondent/applicant

Mr. Kemboi Court Assistant

