



**Butoyi (As a Substitution for Canute Ifute Butoyi - Deceased) v Attorney General
(Cause 828 of 2022) [2024] KEELRC 475 (KLR) (6 March 2024) (Ruling)**

Neutral citation: [2024] KEELRC 475 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 828 OF 2022**

JK GAKERI, J

MARCH 6, 2024

BETWEEN

SYLVESTER SHIHOYA BUTOYI (AS A SUBSTITUTION FOR CANUTE IFUTE BUTOYI - DECEASED) PLAINTIFF

AND

THE HON. ATTORNEY GENERAL RESPONDENT

RULING

1. Before the court for determination is a Notice to Show Cause to the Claimant to demonstrate why the instant suit should not be dismissed for want of prosecution under Rule 16 of the Employment & Labour Relations Court (Procedure) Rules, 2016, owing to non-activity.
2. Fortunately, on 18th October, 2023, when the issue came up before this court for the 1st time, Mr. Dida holding brief for Mutiso for the Claimant informed the court that he had filed a Replying Affidavit which the court perused and inter alia vacated the Notice to Show Cause on the ground that the Claimant passed on on January 21st 2019 and the confirmed Grant was issued on 14th June, 2021 and the suit, originally filed at the High Court was eventually transferred to this court on 1st November, 2022.
3. On 4th December, 2023, Mr. Kabilah holding brief for Mr. Mutiso for the Claimant informed the court that the purpose of the mention was to confirm whether the Claimant had filed a Replying Affidavit to the Notice of Motion and prayed for a hearing date.
4. Mr. Aluoch on the other hand reported that they had not been served and prayed for leave to respond.
5. The Claimant’s counsel was directed to reserve the Replying Affidavit and the Respondent’s counsel was granted leave to respond as necessary.



6. On 7th February, 2024, Dida informed the court that the Replying Affidavit had been filed and served and they would rely on it exclusively and a ruling date was set.
7. Subsequently, counsel notified the court that on perusal of the court record, he had ascertained that Notice to Show Cause had been vacated and the court confirmed as much.
8. This ruling is therefore intended to set the record straight that Notice to Show Cause dated 6th September, 2023 was vacated on 18th October, 2023 and the suit is ready for hearing as the parties have complied unless otherwise indicated.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 6TH DAY OF MARCH 2024

DR. JACOB GAKERI

JUDGE

ORDER

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court has been guided by Article 159(2)(d) of *the Constitution* which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the *Civil Procedure Act* (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

DR. JACOB GAKERI

JUDGE

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