



**Odongo v National Transport and Safety Authority (Cause  
160 of 2017) [2024] KEELRC 879 (KLR) (24 April 2024) (Ruling)**

Neutral citation: [2024] KEELRC 879 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU  
CAUSE 160 OF 2017  
S RADIDO, J  
APRIL 24, 2024**

**BETWEEN**

**ENOCK JAMES ODONGO ..... CLAIMANT**

**AND**

**NATIONAL TRANSPORT AND SAFETY AUTHORITY ..... RESPONDENT**

**RULING**

1. The Court dismissed the Cause herein on 27 March 2023 when it came up for hearing. The Claimant and his advocate were absent.
2. The dismissal prompted the Claimant to file a Motion on 10 May 2023, seeking an order setting aside the dismissal, and the reinstatement of the Cause.
3. The Court anxiously considered that application and record, and more so the proposal from the Respondent to reinstate the Claimant, and came to the view that the interests of justice tilted in favour of allowing the Motion in order to allow a mutually beneficial settlement between the parties.
4. The Respondent then informed the Court that it had sent a settlement proposal to the Claimant, and the Court set mention on 7 November 2023 to get an update from the parties on settlement.
5. The Claimant did not attend the Court on 7 November 2023, and upon the request of the Respondent, the Court set another mention for 14 December 2023.
6. Again, the Claimant did not attend the Court despite service.
7. Consequently, the Respondent applied to have the Cause dismissed. The Court obliged and dismissed the Cause with costs.
8. On 29 February 2024, the Claimant filed another Motion seeking an order setting aside the dismissal of the Cause.



9. The primary ground in support of the Motion was that the Claimant's advocate had another case proceeding before the High Court in Kapenguria on 14 December 2023 and when he eventually logged into this Court's virtual platform, he found the Cause had already been dismissed, and that it was in the interest of justice to reinstate the Cause.
10. The Court gave directions on 18 March 2024, and the Respondent filed a replying affidavit in opposition to the Motion on 19 March 2023.
11. In the affidavit, it was asserted that the Motion was incurably defective because it was supported by an affidavit sworn before the Motion was prepared; the exhibits were not sealed by a Commissioner of Oaths; the Claimant had a record of indolence in prosecuting his claim; the Claimant had approached the Court with unclean hands; the application for reinstatement of the Cause was filed two months after dismissal, and that the Motion did not meet the legal threshold for review under Rule 33 of the *Employment and Labour Relations Court (Procedure) Rules*, 2016.
12. The Claimant filed his submissions on 3 April 2024 (should have been filed and served on or before 29 March 2024) and the Respondent on 4 April 2024.
13. The Court has considered the Motion, affidavits and submissions and come to the view that the Motion should be declined.
14. The Cause was dismissed on 14 December 2023.
15. The Claimant moved the Court on 29 February 2024, two months after the dismissal. No explanation has been offered at all for the inaction, and the Court finds there was an inordinate delay.
16. The Claimant's advocate has attempted to explain that the failure to log into the virtual Court on 14 December 2023 was occasioned by attendance before the High Court in Kapenguria.
17. The explanation is not corroborated by an extract from the e-filing system. The extract shows that the advocate had an application/session with the High Court on 13 December 2023 and 15 December 2023, and not 14 December 2023.
18. A perusal of the record indicates that the Claimant and his advocate have woefully failed to comply with court directions and/or act with diligence in prosecuting the Cause. He filed his submissions relative to the instant Ruling outside the agreed timelines.
19. Further, it even appears that the Claimant did not take seriously the Respondent's offer to reinstate him to work 4 years after dismissal from employment despite the law prescribing a 3-year limitation.

### **Orders**

20. The Motion filed in Court on 29 February 2024 is found without merit and is dismissed with costs.

**DELIVERED VIRTUALLY, DATED AND SIGNED IN KISUMU ON THIS 24<sup>TH</sup> DAY OF APRIL 2024.**

**RADIDO STEPHEN, MCIARB**

**JUDGE**

Appearances

For Claimant Wambilianga, Majani & Associates

For Respondent Sheikh & Co Advocates



Court Assistant Chrispo Aura

