



**Ali v Murugu & another (Cause E147 of 2022)
[2024] KEELRC 1524 (KLR) (14 June 2024) (Ruling)**

Neutral citation: [2024] KEELRC 1524 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E147 OF 2022**

**J RIKA, J
JUNE 14, 2024**

BETWEEN

KALTHUMI MOHAMED ALI CLAIMANT

AND

NATHAN M MURUGU 1ST RESPONDENT

SIMS WOMEN HEALTH SERVICES LIMITED 2ND RESPONDENT

RULING

1. This Claim was scheduled for hearing for the first time, on 19th September 2023.
2. The date had been taken by the Claimant, in the absence of the Respondents. There was no evidence that the Respondents were notified about the hearing date. The Respondents were absent on 19th September 2023, and hearing was rescheduled to 19th December 2023, with an order that the Respondents are notified.
3. When the Claim was called out for hearing on 19th December 2023, the Claimant was absent. Her Advocate was absent. The Respondents' Advocate prayed the Court for dismissal of the Claim for non-attendance, an order that the Court granted, with no order on the costs.
4. Ms. Wanjau, Advocate for the Claimant, appeared before the Court after the dismissal orders had issued, and the Respondents' Advocate gratefully exited the hearing platform. The Court advised Ms. Wanjau to lodge the necessary application for reinstatement of the Claim.
5. The Claimant filed the application dated 5th February 2024 seeking reinstatement. The application is founded on the affidavit of the Claimant, sworn on 5th February 2024. She states that her Advocate was involved in another hearing at the time of dismissal, and that the record attests to the Claimant's diligence and willingness in prosecution of her Claim. The affidavit also alludes to indisposition of the Claimant's Advocate. The nature of indisposition is undisclosed.



6. The Claimant supplemented her explanation through her further affidavit sworn on 12th March 2024.
7. The 1st Respondent swore an affidavit in response, on 23rd February 2024. He emphasizes that the hearing date was scheduled by the Claimant, and notice served upon the Respondents, but the Claimant and her Advocate did not attend Court, when the Claim was called out for hearing. There is no good reason given, to justify their absence and reinstatement of the Claim.
8. It was agreed by the Parties that the application is canvassed and considered on the strength of the Parties' affidavits and submissions. They confirmed filing and exchange of submissions at the last mention, on 3rd April 2024.

The Court Finds: ___ -**

9. The record shows that the Claimant is keen on prosecuting her Claim. She has taken active steps to prosecute the Claim, since it was filed.
10. She scheduled the Claim for hearing initially on 19th September 2023, but hearing could not proceed, on account of the Respondents having not been notified. The Claimant's Advocate was late in Court, when the Claim was rescheduled for hearing on 19th December 2023. Although the Court is not persuaded on the reasons given for non-attendance at the time the file was called out for hearing, it is the view of the Court that the Claimant should not be punished for the mistake of her Advocate. A responsible Advocate will arrange for holding of his/ her brief in case he/ she is engaged in another Court, or indisposed, as the Claimant's Advocate explains, was the cause of her lateness. It is not even explained why the Claimant was not advised by her Advocate to attend Court, and communicate to the Court and the Respondent's Advocate, that she was held up elsewhere. It is noted also that the Claimant's Advocate scheduled the Claim for hearing on 19th September 2023, but neglected to notify the Respondents' Advocates.
11. The Claimant pleads to have been a long-serving Employee of the Respondents, dating back to 1992, before dismissal in 2021. She invested long years of service, in the Respondents' business, and ought to be granted an opportunity to pursue the dividends of her investment. Her Claim is pleaded at over Kshs. 10 million. She ought to be given a chance to prosecute the Claim, not locked out through the negligence of her Advocates.
12. Her Advocates however, will pay costs of Kshs. 8,500 to the Respondents. Their explanation about being indisposed or being involved in hearing elsewhere, on the date taken by them for hearing of this Claim, was not fair to the Claimant, the Respondent or indeed the Court.

It is ordered: -

- a. The Claim is reinstated.
- b. Costs of Kshs. 8,500 to the Respondents, to be paid by the Claimant's Advocates.

DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY AT NAIROBI, UNDER PRACTICE DIRECTION 6[2] OF THE ELECTRONIC CASE MANAGEMENT PRACTICE DIRECTIONS, 2020, THIS 14TH DAY OF JUNE 2024.

JAMES RIKA

JUDGE

