



Amudala v African Bush and Beach Adventures & another (Employment and Labour Relations Cause E007 of 2024) [2024] KEELRC 2336 (KLR) (26 September 2024) (Ruling)

Neutral citation: [2024] KEELRC 2336 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
EMPLOYMENT AND LABOUR RELATIONS CAUSE E007 OF 2024**

**M MBARÚ, J
SEPTEMBER 26, 2024**

BETWEEN

LEVI MUYONGA AMUDALA CLAIMANT

AND

AFRICAN BUSH AND BEACH ADVENTURES 1ST RESPONDENT

KERSTIN AMUDALA NEE KERSTIN GEYER 2ND RESPONDENT

RULING

1. The claimant filed an application dated 2nd July 2024 seeking an order that the orders issued on 20 May 2024 be reviewed and varied the order dismissing the suit be set aside and the suit be reinstated.
2. The application is supported by the affidavit of the claimant and because he filed the claim on 9 February 2024 following the unfair termination of employment. Summons issued and the respondents filed a response and the matter was allocated a hearing date for 20 May 2024 without the knowledge of the claimant. Upon enquiry at the registry on 22 May 2024 it was discovered that the matter was in court and dismissed for want of attendance and prosecution.
3. The notice to show cause issued by the court was not received. The postal address through which the notice issued does not belong to the claimant or his advocates.
4. In the interests of justice, the claimant is seeking the orders dismissing his claim be set aside and the suit be reinstated for hearing and determination on the merits.
5. In reply, the respondents filed the Replying Affidavit of the 2nd respondent who aver that the application is filed in abuse of court process after failing to attend court to prosecute his case. The failure to attend court when required is a clear demonstration that there is no interest in this case. On 19 March 2024 the claimant attended court to fix the matter for hearing but elected not to inform the respondents. A hearing date was allocated for 12 April 2024 and no notice issued. The claimant failed



to follow up and on the issued notice to show cause, there was no attendance leading to dismissal of the suit.

6. Ms. Gever aver that the claimant has not demonstrated any interest in this case to justify the grant of the orders sought and the application should be dismissed with costs.
7. Both parties attended court and made oral submissions. These submissions are analysis and the issues which emerge for determination are whether the orders dismissing the suit herein should be reviewed and whether the suit should be reinstated for hearing and determination.
8. The claimant filed this claim on 9 February 2024. He was issued with a date at the registrar to attend on 12 April 2024 to fix a hearing date. He did not attend court as directed and a notice to show cause issued for 20 May 2024 where the claimant remained absent and the respondents were in court repressed by their advocate.
9. The claimant's case is that the notice to show cause was delivered to the wrong address.
10. In the Memorandum of Claim, the address of service is M/s Ngonze & Ngonze Advocates and the email address is legalmsa@ngonze.com or ngonze.legal@gmail.com
11. The Notice to Show Cause was served by the court through legalmsa@ngonze.com and ngonze.legal@gmail.com to the claimant and to luvunoadvo@gmail.com for the respondent.
12. There is an Affidavit of Service filed to confirm service of the Notice.
13. The claimant through his advocates has continued to use the same addresses as used by the court to effect service through legalmsa@ngonze.com and ngonze.legal@gmail.com
14. The failure to attend court as directed is a serious lapse on the part of a party particularly the claimant who filed this claim seeking justice. To stall and fail to attend as required only negates the justice sought in the first instance. The pleadings are filed and addressed for service to ensure each party receives the necessary information for the suit and once served, there is a duty to attend diligently and as required.
15. In this case, the issue of whether the Notice to Show Cause dated 29 April 2024 addressed above, the court will not unnecessarily punish the claimant and in the interest of justice, to secure the rights of the parties, orders dismissing the suit herein are set aside.
16. Application dated 2 July 2024 is allowed and the suit herein reinstated. Hearing to proceed on the merits. Costs to abide by the outcome of the claim.

DELIVERED IN OPEN COURT AT MOMBASA THIS 26 DAY OF SEPTEMBER 2024.

M. MBARŪ

JUDGE

In the presence of:

Court Assistant: Japhet

..... and

