



**Kibinge v Co-operative Bank of Kenya Limited (Cause 843 of 2019)
[2024] KEELRC 2570 (KLR) (24 October 2024) (Ruling)**

Neutral citation: [2024] KEELRC 2570 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 843 OF 2019
S RADIDO, J
OCTOBER 24, 2024
(ORIGINALLY NAIROBI CMELRC NO 90 OF 2018)**

BETWEEN

JANE MUNJIRU KIBINGE CLAIMANT

AND

CO-OPERATIVE BANK OF KENYA LIMITED RESPONDENT

RULING

1. On 6 June 2024, the Court dismissed the Cause herein for want of prosecution.
2. The dismissal prompted Jane Munjiru Kibinge (the applicant) to move the Court on 12 June 2024, seeking orders:
 - i. ...
 - ii. That the orders of this Honourable Court made on 6th June 2024 dismissing the above suit be set aside.
 - iii. That the suit herein be reinstated and heard on its own merit.
 - iv. That the costs of this application be provided for.
3. The Co-operative Bank of Kenya Ltd (the Respondent) filed Grounds of Opposition dated 12 July 2024, and when the parties appeared in Court on 7 October 2024, the Court directed them to file and exchange submissions.
4. The applicant filed her submissions on 15 October 2024 and the Respondent on 22 October 2024.
5. The Court has considered the Motion, affidavit, Grounds of Opposition and submissions and the record.



6. On 30 January 2019, the applicant secured leave from the Senior Resident Magistrate to amend the Statement of Claim. The Amended Statement of Claim was filed on 1 February 2019.
7. Thereafter hearing commenced on 24 June 2019. In the course of the hearing, the Senior Resident Magistrate declined jurisdiction and the Cause was transferred to this Court.
8. The Court fixed hearing for 23 July 2020. The Claimant and Respondent did not attend the hearing.
9. On 28 March 2023, the Court granted the Claimant's advocate leave to file and serve an application to cease from acting for lack of instructions. The application was allowed on 2 May 2023.
10. The Claimant did not take any steps to prosecute the Cause and the Court issued a Notice to Show Cause.
11. When the Notice to Show Cause came up on 6 June 2024, the Claimant did not satisfy the Court as to why the Cause should not be dismissed, hence the Cause was dismissed, prompting the Motion under consideration.
12. The primary grounds advanced by the Claimant in support of the Motion are that her erstwhile advocates had lied to her that they had filed a Notice of Appointment after the initial advocate got out of the record, and that she was an innocent party who should not suffer on account of mistakes by an advocate.
13. The Court has looked at the proceedings of 6 June 2024. The same reasons given from the bar for the failure to prosecute the Cause are the very same reasons now reduced into writing by the Claimant.
14. It is not open to this Court to relook at the explanations which were tendered by the Claimant and got rejected by the Court before dismissing the Cause. The Court is functus officio and the option available to the Claimant was to lodge an appeal against the dismissal of the Cause.
15. The Motion dated 7 June 2024 is dismissed with costs.

DELIVERED VIRTUALLY, DATED AND SIGNED IN NAIROBI ON THIS 24 DAY OF OCTOBER 2024.

RADIDO STEPHEN, MCI Arb

JUDGE

Appearances

For applicant Mr Nandi instructed by Lucheli Musundi & Co. Advocates

For Respondent Mr Kimondo instructed by Kimondo Mubea & Co Advocates

Court Assistant Wangu Mugo

