



**Kenya Shipping Clearing Freight Logistics & Warehouse Workers Union v Vegpro (K) Ltd VP Group (Cause E1031 of 2021) [2024] KEELRC 13279 (KLR) (28 November 2024) (Ruling)**

Neutral citation: [2024] KEELRC 13279 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E1031 OF 2021  
B ONGAYA, J  
NOVEMBER 28, 2024**

**BETWEEN**

**KENYA SHIPPING CLEARING FREIGHT LOGISTICS & WAREHOUSE  
WORKERS UNION ..... CLAIMANT**

**AND**

**VEGPRO (K) LTD VP GROUP ..... RESPONDENT**

*(Before Hon. Justice Byram Ongaya on Thursday 28th November, 2024.)*

**RULING**

1. The claimant filed the notice of motion dated 24.07.2024 seeking the following orders:
  1. Spent.
  2. That the Honourable Court be pleased to set aside the dismissal orders made on 24.07.2024 and all consequential orders thereto entered on the same even date.
  3. That the instant suit be reinstated and set down for hearing and expeditious disposal.
  4. That costs of this application be provided for.
2. The application was made on the grounds set out therein and supported by the affidavit sworn by James O. Tongi on 24.07.2024. It was urged as follows:
  - a. The instant suit was fixed for hearing when all parties were present on 07.05.2024.
  - b. The matter came up for hearing on 24.07.2024 at 9:00am when all parties appeared before the Honourable Court virtually and took time for allocation for 10:45am. The claimant was present throughout the virtual session when the matter came up but the union representative tried to address the Court in vain. This compelled the union representative to log out and re-



log into the session but at the time of re-joining the court session, the Court had adjourned. The union representative then called the court clerk, Mr. Ngumi, to find out the directions of the Court in respect to the instant cause. The case was dismissed.

- c. The non-attendance of the claimant was unintended since it was occasioned by the malfunction of the claimant union's gadgets.
  - d. The claimant/applicant is keen to have the suit heard and concluded in the shortest time possible and if the Orders given on 24.07.2024 are not vacated, the union will be highly prejudiced.
  - e. It is in the interest of justice that the dismissal orders be set aside and or reviewed and this matter be set down for Hearing for expeditious disposal.
3. In response, the respondent filed the replying affidavit sworn by Arthur Mwangi on 14.10.2024 through Okweh Achiando & Company Advocates. It was averred that the claimant failed to appear for hearing on 24.07.2024 to prosecute its matter. The maxim of equity that 'equity aids the vigilant and not the indolent' bars the claimant from obtaining any orders as it has been indolent in prosecuting its claim, and therefore not deserving of the orders sought in its application. That the claimant has also not demonstrated the steps, if any, that it took to prosecute the claim and no reasonable explanation has been provided for its non-attendance. That the Court rightfully exercised its discretion under Section 22(2) of the Employment and Labour Relations Court (Procedure) Rules which provides that, where a party fails to attend Court on the day fixed for hearing, the Court may dismiss the suit except for good reason to be recorded. Consequently, the Orders of this Court of 24.07.2024, dismissing the claimant's suit for non-attendance, should not be disturbed.
4. The parties filed their respective submissions.
5. The Court has considered that the reasons for the claimant's failure to attend Court at the time for hearing. Are the reasons truthful? The record shows they are not. The alleged reason is that the claimant's representative was in Court at 10.45am when the case was called out for hearing and the representative tried to address the Court but could not be heard. Nothing is said of the available chat facility and why a text message could not be conveyed, accordingly. The applicant says nothing about the witness who was also expected to testify. A most important record of the day is that the order was that the hearing would be at 10.45am or thereafter. The case was then called out at 1200 noon and Mr. Tongoi for the claimant was absent. The Court order of the day is stated thus, "Case was called out three times but claimant was absent and is dismissed for want of attendance with no costs." The account for the applicant cannot be trusted. The witness and Mr. Tongoi were absent at the appointed time. Accordingly the application must fail as unjustified

The application is therefore dismissed with costs.

**SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS THURSDAY 28<sup>TH</sup> NOVEMBER 2024.**

**BYRAM ONGAYA**

**PRINCIPAL JUDGE**

