



**Makaya v Premier Industries Limited (Cause 473 of 2015)
[2024] KEELRC 13380 (KLR) (7 November 2024) (Ruling)**

Neutral citation: [2024] KEELRC 13380 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 473 OF 2015
S RADIDO, J
NOVEMBER 7, 2024**

BETWEEN

ANDERSON MAKAYA CLAIMANT

AND

PREMIER INDUSTRIES LIMITED RESPONDENT

RULING

1. First Ruling in this file was on 8 February 2018. The other Rulings followed on 19 March 2018, 9 November 2018 and 26 September 2023.
2. For determination is a Motion dated 29 January 2024 and filed in Court on 14 March 2024, seeking orders:
 - i. The dismissal of the application dated 08.02.2023 on 26.09.2023 be reviewed and set aside.
 - ii. The application be set down for hearing forthwith.
 - iii. Costs be in the cause.
3. The main reasons given in support of the Motion are that the application was dismissed on a date set for mention; the failure of the advocate to attend Court was not deliberate and excusable and that the Claimant had made efforts to set down the Cause for hearing without success.
4. On 14 October 2024, the Respondent filed a replying affidavit which had been sworn by its Director on 11 October 2024. The affidavit substantively responds to a Motion dated 8 February 2023, which the Court had already dealt with.
5. On the same day, the Court directed the parties to file and exchange submissions.



6. Instead of filing submissions, the Claimant filed on 30 October 2024, a Notice to Withdraw the Motion dated 29 January 2024 (the Claimant should have filed and served submissions before 22 October 2024). The Respondent had filed its submissions on 29 October 2024.
7. The Court has considered the Motion, affidavits and submissions and conclude that despite the Notice of Withdrawal, it would have found the Motion unmerited because of the following reasons.
8. One, the Court set the Motion dated 8 February 2023 for hearing on 26 September 2023. The Claimant's advocate was present when the direction was issued but he failed to attend the hearing. It is not true that the Motion was dismissed when scheduled for a mention.
9. Two, the Cause was dismissed on 8 February 2018, and the Claimant filed an application dated 26 February 2018, to set aside the order of dismissal.
10. The Court heard the Motion and, in a Ruling delivered on 19 April 2018, the Court declined to set aside the order of dismissal. It is, therefore, not correct for the Claimant to assert that he had always been ready to prosecute the Cause.
11. Three, the Claimant then filed an application dated 19 June 2018, seeking a review of the Ruling of 8 February 2018.
12. The Court heard the Motion and delivered a Ruling on 9 November 2018. The Court declined to allow the application for review.
13. The Claimant was not satisfied with the Ruling and he filed a Notice of Appeal on 7 December 2018.
14. Four, on 20 June 2024, the Claimant filed a Motion dated 8 February 2023. This Motion was seeking the setting aside of the dismissal of the Cause and the application seeking review.
15. The Court had dismissed an initial application seeking review on 9 November 2018.
16. The orders sought by the Claimant have been sought previously through various applications and were dismissed after due consideration.
17. In light of the above, the Court is not only functus officio but the instant application is an abuse of the court process and further is caught up by the doctrine of res judicata.

Orders

18. The Motion dated 29 January 2024 is marked as withdrawn. The Respondent is awarded wasted costs of Kshs 25,000/- to be paid within 30 days.

DELIVERED VIRTUALLY, DATED AND SIGNED IN NAIROBI ON THIS 7TH DAY OF NOVEMBER 2024.

RADIDO STEPHEN, MCI Arb

JUDGE

Appearances

For Claimant Khalwale & Co. Advocates

For Respondent Okweh Achiando & Co Advocates

Court Assistant Wangu

