



**Mukuna v Kenya National Qualifications Authority (Cause E182 of 2022)
[2024] KEELRC 13381 (KLR) (7 November 2024) (Ruling)**

Neutral citation: [2024] KEELRC 13381 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E182 OF 2022
S RADIDO, J
NOVEMBER 7, 2024**

BETWEEN

FRANKLIN N MUKUNA CLAIMANT

AND

KENYA NATIONAL QUALIFICATIONS AUTHORITY RESPONDENT

RULING

1. The Cause herein was dismissed on 31 May 2024 when the parties failed to appear for hearing of a Notice to Show Cause.
2. Perturbed with the dismissal, the Claimant filed a Motion dated 9 June 2024, seeking an order restoring the Cause.
3. The primary grounds in support of the Motion were that it was in the interest of justice; the parties had complied with pre-trial directions; the dispute had been sent to mediation; the Court had not notified the parties of new dates when directions were to be given; that the Court did not sit on 27 May 2024 and parties were not notified of new dates; the Court did not notify the Claimant of the hearing date for the Notice to Show Cause and that the Claimant had always been ready to prosecute the Cause.
4. When the Motion came up on 14 October 2024, the Court directed the Claimant to file and serve submissions before 22 October 2024, and the Respondent on or before 29 October 2024.
5. The Claimant's submissions were filed on 29 October 2024 (should have been filed and served before 22 October 2024). The Respondent had filed its submissions on 28 October 2024.
6. The Court has considered the record, Motion, affidavit(s) and submissions.
7. On 23 January 2024, the Court fixed the Cause for hearing on 20 February 2024. The hearing was however rescheduled to 9 April 2024, but the hearing was vacated to allow the Respondent time to file documents.



8. When the Cause next came up on 11 March 2024, none of the parties were in attendance, and the Court directed that parties move the Court appropriately.
9. On 3 April 2024, the Court sent an email to the parties to attend Court on 2 May 2024.
10. However, on 19 April 2024, the Court sent another email communication to several advocates including the Claimant's advocate giving notice that matters scheduled for 29 April 2024, 30 April 2024 and 2 May 2024 had been brought backwards to 22 April 2024.
11. The advocate did not attend Court and the Court directed that a Notice to Show Cause with a return date of 27 May 2024 be issued. The Notice was emailed to the parties on 7 May 2024.
12. The Court appears not to have sat on 27 May 2024 for the record show that the file was next placed before the Court on 31 May 2024. None of the parties were present and the Court dismissed the Cause, prompting the present Motion.
13. There is no note or record in the file to explain how and why the return date of 27 May 2024 was changed to 31 May 2024. If a notice was sent to the parties, it is not on record.
14. The Court will, therefore, exercise its discretion in favour of the Claimant.

Orders

15. In light of the above, the order dismissing the Cause is vacated and substituted with an order reinstating the Cause.
16. The Claimant did not file submissions within agreed timelines. The Court, therefore, orders him to bear the costs of the application.

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

RADIDO STEPHEN, MCIARB

JUDGE

Appearances

For Claimant Omboko & Co. Advocates

For Respondent Lumumba & Ayieko Advocates

Court Assistant Wangu

