



**Mungoma v Curries Bar and Restaurant (Cause 1784 of 2016)  
[2024] KEELRC 13464 (KLR) (19 December 2024) (Ruling)**

Neutral citation: [2024] KEELRC 13464 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 1784 OF 2016  
S RADIDO, J  
DECEMBER 19, 2024**

**BETWEEN**

**PETER MUNGOMA ..... CLAIMANT**

**AND**

**CURRIES BAR AND RESTAURANT ..... RESPONDENT**

**RULING**

1. The Court dismissed the Cause herein on 24 January 2024 because Peter Mungoma (the Claimant) failed to appear for the hearing.
2. The Claimant then filed a Motion dated 4 September 2024, seeking orders:
  - i. ...
  - ii. That this Honourable Court be pleased and do reinstate the main suit herein being Civil Suit No. 1784 of 2016 for hearing which was dismissed for non-attendance on the 24<sup>th</sup> January 2024.
  - iii. That costs of this application be in the cause.
3. The main grounds in support of the Motion were that after the dismissal of the Cause on 24 January 2024, the Claimant filed a Motion dated 24 January 2024 seeking reinstatement of the Cause but the Motion was dismissed on 4 March 2024 due to non-attendance while the Claimant’s advocate had technical challenges logging into the virtual Court; that another application dated 20 March 2024 seeking reinstatement was also dismissed on 31 May 2024 while it had been set for hearing on 27 May 2024.
4. The Court gave directions on 22 October 2024, and the Claimant filed submissions dated 26 November 2024.



5. The Respondent filed a replying affidavit on 28 November 2024. In the affidavit, the primary position taken was that the instant Motion was an abuse of the Court process because it was the third attempt at seeking an order reinstating the Cause.
6. The Respondent's submissions were not on record by the agreed timeline.
7. The Court has considered the Motion, affidavits and submissions on record.
8. The record shows that when the Cause came up for hearing on 16 May 2023, the hearing commenced but was frustrated by noises in the virtual court system/platform. The Court directed the hearing to continue on 20 July 2023.
9. The record further indicates that the Cause was placed before the Judge on 27 July 2023 (it is not clear why since the Court had set a hearing for 20 July 2023).
10. The Claimant and his advocate did not attend Court on this day while the Respondent was represented and, the Court fixed the hearing on 21 November 2023.
11. None of the parties appeared in Court on 21 November 2023, and the Court directed the Registrar to issue a notice to the party to appear for hearing on 24 January 2024. The Court indicated that if none of the parties attended, the Cause would be dismissed.
12. The Registrar issued the Notice, but none of the parties attended hence the dismissal.
13. Upon the dismissal of the Cause, the Claimant filed an application to vacate the dismissal order. The application was dismissed on 4 March 2024 because the advocate was not present to prosecute it.
14. The Claimant then filed a second application seeking similar orders (reinstatement of the Cause) and again, the application was dismissed on 31 May 2024 because the Claimant's advocate was not present.
15. The Claimant, undeterred filed a third application now under consideration.
16. The Claimant stated in his affidavit that the Motion dated 20 March 2024 was to come up for hearing on 25 April 2024, but the Court notified the parties that it would not sit from 23 April 2024 to 3 May 2024.
17. The Claimant further deponed that the Motion was rescheduled to 27 May 2024 and he served a hearing notice upon the Respondent.
18. However, the Court did not sit on 27 May 2024.
19. The record does not indicate whether and how the parties were notified of the change of hearing date from 27 May 2024 to 31 May 2024.
20. The Claimant's testimony was taken on 16 May 2023, and cross-examination was frustrated because of technical challenges with the virtual court platform.
21. The Claimant is seeking an exercise of the Court's discretion. It is not clear from the record why the Court did not sit on 27 May 2024 to afford the Claimant an opportunity to prosecute its application.
22. It is not also clear from the record whether the parties were notified to attend Court on 31 May 2024.
23. The Respondent did not cite any authority for the proposition that filing an application where an earlier application had been dismissed for failure to appear in Court would by itself amount to an abuse of the court process.



24. In the circumstances, the Court is of the view that it should exercise its discretion in favour of the Claimant.

**Orders**

25. In light of the above, the Motion dated 4 September 2024 is allowed and the Cause is reinstated on the docket for hearing.

26. Costs in the cause.

**DELIVERED VIRTUALLY, DATED AND SIGNED IN NAIROBI ON THIS 19<sup>TH</sup> DAY OF DECEMBER 2024.**

**RADIDO STEPHEN, MCIARB**

**JUDGE**

Appearances

For Claimant Kaluki Muriu Ndiritu & Co Advocates LLP

For Respondent Mutua Mathuva & Co. Advocates

Court Assistant Wangu

