



REPUBLIC OF KENYA



KENYA LAW
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**Ng'ang'a v Githunguri Dairy Farmers Co-operative Society Limited (Cause
1250 of 2015) [2023] KEELRC 703 (KLR) (24 March 2023) (Ruling)**

Neutral citation: [2023] KEELRC 703 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1250 OF 2015
B ONGAYA, J
MARCH 24, 2023

BETWEEN

ALBERT KIMANI NG'ANG'A PLAINTIFF

AND

**GITHUNGURI DAIRY FARMERS CO-OPERATIVE SOCIETY
LIMITED DEFENDANT**

RULING

1. The application is for orders that the firm of M/s P.K Njoroge & Company Advocates be allowed to come on record in place of Njoroge Kugwa & Company Advocates order dismissing the claimant's suit for want of attendance during the date fixed for undisclosed hearing made on unknown date be set aside; and, that the claimant's claim be reinstated for an expeditious disposal. The application is based on the supporting affidavit of the plaintiff and it is urged as follows:
 - a. The claimant was not informed of the hearing date.
 - b. It took the claimant many years to learn that his suit was dismissed for non-attendance.
 - c. Since termination of his employment the claimant has been depending on relatives and well-wishers to feed his young family. The claimant has been unable to secure any gainful employment since prospective employers ask for a certificate of service which forms part of the claim.
 - d. The failure to attend court is serious but in the instant case the plaintiff was not informed by his advocates and his advocates failed to attend and the suit was dismissed.



- e. The plaintiff's current advocates P.K.Njoroge Advocate visited the defendant's advocates G.K Gatere & Company Advocates on August 5, 2022 and that is when the claimant discovered that the suit had been dismissed.
 - f. The claimant states that he appointed Njoroge Kugwa Advocate to act in the suit which he filed on July 17, 2015 but the advocates failed to inform him the progress in the filed suit but that the court file could not be traced. In July 2022 he sought advice from his current advocates and he was asked to provide documents about the suit and on August 5, 2022 at 2.30pm his new advocates visited the defendant's advocates and it was discovered his suit had been dismissed long time ago. He cannot get alternative job because he lacks a certificate of service being one of the claims in the present case.
2. The respondent opposed the application by filing the replying affidavit of its Board Chairman George Kinyanjui Kinuthia sworn on January 3, 2023. it was urged for the respondent as follows:
 - a. The applicant has heaped blame on his erstwhile advocates but has not shown any tangible steps taken by him in following up this matter with either his former advocates or the court registry.
 - b. The application was filed after long delay that is not excusable. The applicant changed advocates after one and half years showing he was indolent and not keen to prosecute the suit.
 - c. If indeed his former advocates held him incommunicado, then it is not explained how he came to know that the firm of G.K. Gatere was on record for the respondent and his present advocates came to be advised that the suit had been dismissed.
 - d. The discretion to set aside an order must be exercised judiciously and not spitefully and should not be in favour of the claimant who appears to block justice.
 - e. The dispute is old and re-opening the same will be unreasonably burdensome upon the respondent.
3. Submissions were filed for parties. The court has considered the material on record. The court returns as follows.
4. First, as urged and submitted for the respondent the applicant has failed to explain the inordinate delay in filing the application.
5. Second as urged and submitted for the respondent, the claimant has failed to explain his separation with his initial advocates and why he opted not to seek advice and update from the initial advocates. The applicant has not shown full disclosure and diligence in that regard. As submitted for the respondent it was not enough for the applicant to simply blame his initial advocates without showing due diligence on his part.
6. Thirdly the applicant has failed to explain his non-attendance on the date the suit was dismissed.
7. In the circumstances, the application is found not merited as to set aside the dismissal order as prayed for. The claimant is entitled to change advocates and that consideration each party to bear own costs of the application.



8. In conclusion, the application filed for the plaintiff on September 20, 2022 and dated August 23, 2022 is hereby determined with orders:
- a. Leave is granted for the applicant to change advocates as prayed for.
 - b. Subject to order (a) above the application is otherwise dismissed and each party to bear own costs of the application.

**SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS
FRIDAY 24TH MARCH, 2023**

BYRAM ONGAYA

PRINCIPAL JUDGE

