



**Kowino v Population Services Limited (Cause 2563 of 2016)
[2023] KEELRC 699 (KLR) (17 March 2023) (Ruling)**

Neutral citation: [2023] KEELRC 699 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 2563 OF 2016
J RIKA, J
MARCH 17, 2023**

BETWEEN

ARTHUR KOWINO CLAIMANT

AND

POPULATION SERVICES LIMITED RESPONDENT

RULING

1. This claim was initially declined by the court on November 17, 2017 for want of jurisdiction, under clause 13[c] of the parties' contract.
2. The clause states that, 'this agreement will be governed by the laws of the District of Columbia, without regard to its choice of laws principles.'
3. The claimant successfully applied for review of the ruling, and his claim was reinstated through a ruling dated October 7, 2019.
4. The review court correctly held that a choice of the applicable law clause, is not necessary a choice of jurisdiction clause.
5. On October 12, 2021, the matter was mentioned before the court. There was no appearance by either party. The court ordered that the claimant pays Kshs 1,000 adjournment fees, before allocation of a fresh date. It was further ordered that that if no action was taken within 30 days, the claim stood dismissed. 30 days ended on November 13, 2021, there was no action by the claimant, and the claim therefore, stood dismissed.
6. The claimant filed an application dated November 2, 2022, asking the court to set aside the orders made on October 12, 2021 [not November 19, 2021], dismissing the claim.
7. The application is founded on the affidavit of learned counsel for the claimant, Mr Deogratus Omondi Ochieng' sworn on October 28, 2022. He explains that, the orders issued in the absence of the claimant



and his counsel; the claimant was not aware that he was to take action within 30 days, failing which his claim stood dismissed; the file had been untraceable and the claimant only came to learn of the orders issued on October 12, 2021, much later, after writing numerous letters to the court, seeking a hearing date; and that the claimant is desirous of prosecuting the claim.

8. The respondent filed grounds of opposition dated November 9, 2022. Its position is that no explanation is given for the absence of the claimant and his counsel when the orders issued on October 19, 2021 [October 12, 2021]; that the claimant squandered his right to be heard; the mistake of the claimant's counsel should not be visited upon the respondent; the claimant is guilty of inordinate delay in presenting his application; the cause action arose over 6 years ago; and no useful purpose would be served by reinstating the claim.
9. Parties agreed to have the application determined on the strength of their pleadings, affidavits and submissions. Submissions were confirmed to have been filed and exchanged, at the last mention on February 14, 2023.

The Court Finds

10. The claim was fixed for mention on October 12, 2021, when the orders requiring the claimant to pay adjournment fees of Kshs 1000, and to take further action within 30 days, or have his claim dismissed, were issued.
11. It is not clear what was the purpose of the mention on October 12, 2021, and in fact parties were not present when the matter was mentioned before the Deputy Registrar on July 22, 2021, and scheduled for another mention on October 12, 2021.
12. It is not recorded if the court issued mention notices upon the parties for October 12, 2021 when the adverse orders issued against the claimant.
13. Furthermore, it is not recorded that the orders of October 12, 2021, which issued in the absence of both parties, were extracted and served upon the parties by the court.
14. How would the parties know, without service of the orders, that they were to take action within 30 days, in default the claim to stand dismissed?
15. The claimant has demonstrated, he is not an indolent litigant, who filed a claim, and went to slumber. He engaged the court and the respondent severally, to procure a hearing date, without success. It was important that when the court took certain actions *suo moto*, that such actions are communicated to the parties. The court has an obligation to dispose of matters expeditiously, and clear its backlog, alive to the maxim that justice delayed is justice denied. This obligation however must be discharged fairly, in accordance with the law, and in the knowledge that oftentimes, justice hurried, is justice buried.
16. The court is satisfied that the claim was not dismissed fairly, or in accordance with the law.
17. It is ordered: -
 - a. The claim is reinstated.
 - b. Costs in the cause.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 17TH DAY OF MARCH 2023.

JAMES RIKA

JUDGE



[Handwritten signature]

