



Mwangangi v Kikima Farmers Cooperative Society Limited (Employment and Labour Relations Cause 1992 of 2015) [2023] KEELRC 1796 (KLR) (26 July 2023) (Ruling)

Neutral citation: [2023] KEELRC 1796 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE 1992 OF 2015**

**J RIKA, J
JULY 26, 2023**

BETWEEN

BONIFACE KAMAMI MWANGANGI CLAIMANT

AND

KIKIMA FARMERS COOPERATIVE SOCIETY LIMITED RESPONDENT

RULING

1. The Claimant was heard, and closed his case on January 4, 2021, in the absence of the Respondent's Advocate, the Respondent and its witnesses.
2. The Respondent made an application dated February 12, 2021, to recall the Claimant. A ruling was made on April 22, 2022, declining the application.
3. On October 4, 2022, the Respondent's current chairman, and former chairman gave evidence.
4. The 3rd and last witness for the Respondent was scheduled to give evidence on December 7, 2022.
5. The Advocate for the Respondent did not log in, on December 7, 2022, and none of the witnesses for the Respondent logged in.
6. The Court gave an order closing the proceedings, and directed the Parties to file their closing submissions, within 21 days apiece.
7. The Claimant filed his closing submissions dated January 19, 2023.
8. The Respondent did not file its closing submissions, but instead filed an application dated January 20, 2023, seeking orders to have proceedings re-opened and its last witness allowed to give evidence.
9. The application is founded on the affidavit of Respondent's Advocate Mutava T Musyoki, sworn on January 20, 2023.



10. He explains that his internet broke down on the hearing date. By the time he joined the virtual proceedings, the matter had been called out, and orders closing the proceedings issued.
11. The application is opposed through the affidavit of the Advocate for the Claimant, Janice M Ndonge, sworn on February 24, 2023. She states that the Respondent's Advocate and witnesses were not present when the matter was called out on more than one occasion, on the hearing date. She states further that she shares the same office building with the Advocate for the Respondent, and the Respondent's Advocate ought simply to have walked in, and asked her to have the file placed aside, if he was experiencing any challenges in joining the proceedings.

The Court Finds:

12. This Claim was filed in 2015.
13. The Respondent and its Advocate failed to attend Court when the Claimant was heard. Thereafter, considerable time was spent, in arguing an application filed by the Respondent seeking to have the Claimant recalled.
14. There is no persuasive reason given, for the absence of the Respondent's Advocate and witnesses, on the December 7, 2022.
15. It was open to the Respondent's Advocate, to call upon the Advocate for the Claimant, housed in the same office building, to express his inability to the Court, to log in, and seek further directions. The Respondent's Advocate did not contact the Claimant's Advocate, or any other Advocate, to communicate his challenges to the Court.
16. Two witness for the Respondent have given evidence, and produced the documents filed by the Respondent. Their witness statements are not different from that of the remaining witness. The Respondent is a cooperative society, a body corporate, and its evidence has adequately been presented by its chairman, and former chairman.
17. The Court gave the Respondent the opportunity to present all its witnesses, first upon the closure of the Claimant's case, when the Respondent failed to attend Court. Proceedings could have been closed on that date. On the second occasion, when the Respondent's case was due for further hearing, the Respondent's Advocate and the witness stayed away from the proceedings, without a persuasive reason.

It Is Ordered:

- a. The application filed by the Respondent dated January 20, 2023 is declined.
- b. The Respondent is granted another 21 days to file and serve its closing submissions.
- c. Costs to the Claimant.
- d. Mention on September 20, 2023 for scheduling of the date for Judgment.

DATED, SIGNED AND RELEASED TO THE PARTIES VIA E-MAIL AT NAIROBI, UNDER PRACTICE DIRECTIONS 6[2] OF THE ELECTRONIC CASE MANAGEMENT PRACTICE DIRECTIONS, 2020, THIS 26TH DAY OF JULY 2023.

JAMES RIKA
JUDGE

