



**Kiendi v Makini Schools Limited (Cause 1333 of 2018)
[2023] KEELRC 2148 (KLR) (19 September 2023) (Ruling)**

Neutral citation: [2023] KEELRC 2148 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1333 OF 2018
NZIOKI WA MAKAU, J
SEPTEMBER 19, 2023**

BETWEEN

FELISTAS WAUSI KIENDI CLAIMANT

AND

MAKINI SCHOOLS LIMITED RESPONDENT

RULING

1. The Claimant’s notice of motion application dated March 27, 2023 is one seeking reinstatement of the suit. The suit was dismissed on March 27, 2023 upon application by the Respondent. The Respondent’s motion seeking dismissal of the suit for want of prosecution was undefended and the Claimant did not appear at the hearing. The Respondent filed an application on November 22, 2022 and served the Claimant.
2. The motion by the Respondent was heard and an order dismissing the suit made. That precipitated the current motion before the Court. The Claimant had been accused of indolence and failure to prosecute his suit hence the application for dismissal. The Court record indicates that the matter was before Justice Radido for directions on September 18, 2019 when the Judge whereat directed that parties file agreed issues by October 11, 2019 and thereafter take a date for hearing. The matter was thereafter not listed for hearing despite the efforts of the Registry to set a hearing date culminating in the motion for dismissal.
3. Between the appearance on May 6, 2019 before Hon. Mutai – Deputy Registrar, the court appearance before Justice Radido in September 2019 and the appearance before this Court on March 27, 2023, a lot of time had lapsed with no action from the Claimant. The Claimant seems to blame COVID 19 for the failure to move the Court. He depones and argues that the global pandemic caused a scaling down of court operations and the commencement of online and/or electronic court proceedings. He asserts that for some time, many people were unable to travel to Nairobi since more stringent measures were employed by the Government to ban travels in and out of Nairobi. He argues that the Court Registry



was at times closed as ordered by the Honourable Chief Justice to avert the spread of the corona virus. The Claimant asserted that no notice to show cause was issued in the matter. The Claimant argued that he secured a mention date in April 2023 for purposes of fixing dates. He asserts that there was no acknowledgement of service of the Notice of Motion dated November 21, 2022 lodged by the Respondent. It is argued that the Claimant's case and the replies to the application filed subsequently raise triable issues and that the Constitution avails the Claimant equality before the law and he seeks hearing.

4. The Respondent in its response asserts that the Claimant was served with the notice of motion via email and proceeds to recite the 3 email addresses used. The affidavit of service set out the emails upon which the application was served and these were to the Counsel on record for the Claimant. What does not sit well with the Court in relation to the matter is that the Advocate for the Respondent waited until a mere 3 days to the intended date for hearing of the application before serving the said motion via email. The notice of hearing though dated March 16, 2023 was not served until March 23, 2023. This was not in keeping with good practice as a date taken on 14th March before the Registry ought to have been communicated at least within a few days of the fixing. Nothing would have been easier than to dispatch a hard copy of the notice granted that in November 2022, a modicum of normality had returned post covid. It would not have hurt to ensure the other side are well and truly aware of the impending end of their suit. As such, the Court reluctantly will permit a reopening of the matter, reinstate the suit to hearing but the Claimant must pay thrown away costs assessed at Kshs 25,000/- within 14 days of this Ruling failing which the motion by the Claimant will stand automatically dismissed.

It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 19TH DAY OF SEPTEMBER 2023

NZIOKI WA MAKAU

JUDGE

Page 1 of 1

