



**David v Colindale Security Limited (Employment and Labour Relations Cause
1943 of 2016) [2023] KEELRC 2786 (KLR) (31 October 2023) (Ruling)**

Neutral citation: [2023] KEELRC 2786 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE 1943 OF 2016
MA ONYANGO, J
OCTOBER 31, 2023**

BETWEEN

MUTUA DAVID CLAIMANT

AND

COLINDALE SECURITY LIMITED RESPONDENT

RULING

1. The application dated September 13, 2021 is for the reinstatement of the suit which was dismissed for want of prosecution on May 10, 2021 at the instance of the court.
2. The application is supported by an Affidavit sworn by the claimant on September 13, 2021. He deposes that he personally filed this case in 2016 and has been willing to pursue his case and was waiting the court to give him a hearing date. He contends that after waiting for a date and after being unable to access the court premises after Covid 19 pandemic outbreak he decided to engage an advocate and it was then that the advocate discovered that the suit had been dismissed for want of prosecution.
3. In urging the court to reinstate the suit, the claimant avers that the mistake on his part was not intentional nor deliberate as it was a bona fide mistake which was beyond his capability as he is not conversant with court procedures. The claimant has submitted that the suit being an employment claim, it would be just, fair and equitable that he be given an opportunity to prosecute it.
4. The application has not been opposed.
5. The court directed parties to file written submissions on April 28, 2022. The claimant filed his submissions dated May 30, 2022. The respondent did not file any submissions. Sikuta & Company Advocates who were served received notices under protest.
6. The issue for determination in the application is whether there is a basis for the court to exercise its discretion to set aside the order of May 10, 2021 and reinstate this suit.



7. Section 3A of the *Civil Procedure Act* gives courts inherent power to make such orders as may be necessary for the ends of justice to be met.
8. In the case of *Shah -vs- Mbogo & another* (1967) EA 1116, the court when dealing with the issue of discretion of the court, observed as follows;

“The discretion is intended so as to be exercised to avoid injustice or hardship resulting from inadvertence or excusable mistake or error but is not designed to assist a person who has deliberately sought whether by evasion or otherwise to obstruct or delay the course of justice.”
9. Flowing for the above, I allow the instant application. In view of the age of the case the claimant is directed to take a date for directions within the next 30 days with a view to fixing the case for hearing on priority basis.
10. The costs of the application shall be in the cause.

DATED, DELIVERED AND SIGNED AT ELDORET THIS 31ST DAY OF OCTOBER, 2023.

M. ONYANGO

JUDGE

