



Mbundi v World Boots Ltd (Employment and Labour Relations Cause 382 of 2016) [2023] KEELRC 2779 (KLR) (31 October 2023) (Ruling)

Neutral citation: [2023] KEELRC 2779 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE 382 OF 2016
MA ONYANGO, J
OCTOBER 31, 2023**

BETWEEN

JOHN MAGEMBE MBUNDI CLAIMANT

AND

WORLD BOOTS LTD RESPONDENT

RULING

1. *Vide* an undated and unsigned notice of motion filed in court on February 7, 2022, the claimant seeks the following orders:
 - a. That the order of this Honourable Court made on May 31, 2021 dismissing this suit be lifted or set aside,
 - b. That this suit No 382 of 2016 be reinstated,
 - c. That cost of this application be provided for
2. The grounds upon which the Application is made are set out of the face of the application and in the supporting affidavit of Calleb Jomo Ong’uti, counsel for the applicant. In brief counsel states that the firm was served with a Notice to Show Cause and the same was responded to vide a Replying Affidavit dated May 28, 2021; that on the day the Notice to Show Cause came up in court the advocate handling the matter was on maternity leave and had requested another advocate to hold her brief; that the claimant feels that this court did not consider the Replying affidavit dated May 28, 2021; that the advocate holding brief did not have sufficient instructions and did not mention to the court that the parties have been trying to negotiate this matter out of court; that they had been trying to set a date at the registry for this matter but they were never successful due to Covid 19 and backlog at the Registry; that the claimant has interest in his case and since it is the first time it has come for notice to show cause, they had provided sufficient reasons why the same should not be dismissed; that the advocates



have moved with speed to reinstate and is keen to prosecute this suit diligently and expeditiously and that it is in the interest of justice that civil suit No 382 of 2016 be reinstated for hearing.

3. The respondent opposed the application *vide* a Replying Affidavit sworn on June 6, 2022 by the respondent's HR manager, Mr Muthini wherein he deposes that the matter came up on May 31, 2021 for NTSC and that the claimant did not attend court; that it was mentioned on June 14, 2021 but the claimant did not attend court; that when it came up for NTSC on July 12, 2021, the court after being satisfied that the issues and reasons raised by the claimant in the replying affidavit dated May 28, 2021 were not satisfactory issued its orders to dismiss the suit. It was contended that the claimant filed the instant Application more than 6 months after the said orders were issued.
4. In the grounds of opposition, it is averred that the application is incompetent, fatally defective having been brought under the wrong provisions of law; that the orders to dismiss were issued on July 12, 2021 and not May 31, 2021; that the Application seeks to lift or set aside orders that do not exist; that the claimant has failed to annex a copy of the orders sought to be lifted or set aside as mandated by the *Employment & Labour Relations Court (Procedure) Rules*; that the onus of proof lies on he who alleges and the applicant has averred to matters which are not within his knowledge and which should be averred to by the advocate handling the matter; that the claimant has not advanced any cogent reason why he delayed in prosecuting the suit and/or why the suit should be reinstated.
5. The application was canvassed by way of written submissions. Both parties filed their submissions which I have considered.
6. From the record, the suit herein was dismissed on July 12, 2021 for want of prosecution. The instant application was filed almost 7 months after the said order for dismissal was issued.
7. There is no explanation for the delay in filing the application. The applicant has also not addressed the reasons given by the court when dismissing the suit which was that the Affidavit in response to NTSC had not been served and the claimant had admitted not taking any action on the file from July 18, 2018 to February 11, 2021 when the NTSC was issued by the Court.
8. As stated above, the notice of motion in the court file is undated and unsigned. In my view, the failure to sign the motion makes it defective and improperly before the Court.
9. Based on the foregoing, and the fact that there was inordinate delay in filing the instant application, I find the same to be without merit and dismiss it with no orders as to costs.

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

M. ONYANGO

JUDGE

