



**Mohammed v African Banking Corporation (Cause 43 of 2020)  
[2023] KEELRC 2639 (KLR) (26 October 2023) (Ruling)**

Neutral citation: [2023] KEELRC 2639 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA  
CAUSE 43 OF 2020  
AK NZEI, J  
OCTOBER 26, 2023**

**BETWEEN**

**MAHMOOD ADAM MOHMMEED ..... CLAIMANT**

**AND**

**AFRICAN BANKING CORPORATION ..... RESPONDENT**

**RULING**

1. In its Ruling delivered on 28<sup>th</sup> October 2021, this Court ordered as follows:-
  - a. the Claimant's suit/claim herein is hereby stayed pending payment by the Claimant to the Respondent/Applicant of costs in Mombasa CM ELR Cause No. 654 of 2019 (Mahmood Adam Mohammed -vs- African Banking Corporation), assessed and certified by the said Court at ksh. 90,550.00.
  - b. that if payment of the said costs is not made within six(6) months from the date of this Ruling, the suit/claim will stand stayed for a further period of six(6) months, upon the lapse of which the suit shall stand dismissed if payment will not have been made within that period.
  - c. costs of application will be in the cause.
2. Following delivery of the said Ruling, none of the parties herein moved the Court until 11<sup>th</sup> January 2023 when this Court's Deputy Registrar issued notices to the parties for mention of the suit in Court on 8<sup>th</sup> February 2023. On the said date, Counsel for the Claimant informed the Court that the ordered costs had been paid to the Respondent on 23/1/2023. The Respondent's Counsel, while admitting that payment had indeed been made, stated that full payment had been made on 6/2/2023, but not 23/1/2023; and submitted that the Claimant's suit stood dismissed by dint of this Court's orders dated 28/10/2021.



3. Counsel for the Claimant on the other hand submitted that failure by the Claimant to make payment within time was due to the fact that he had been dismissed from his job, and that he had to source for money from elsewhere. Counsel pleaded with the Court to give the Claimant an opportunity to be heard. The Court directed the Claimant to file a formal application within 14 days.
4. On 28/2/2023, the Claimant filed a Notice of Motion 23/2/2023, which was subsequently amended on 14/3/2023. Orders sought in the amended Notice of Motion, which was filed in Court on 15/3/2023, are as follows:-
  - a. that this Court be pleased to reinstate the Claimant's suit and vacate the orders made on 28<sup>th</sup> October 2021 dismissing the Claimant's suit for failure to pay within six months costs awarded to the Respondent in ELRC No. 649 of 2019.
  - b. that the Court be pleased to direct that the Claimant's case proceeds for hearing.
  - c. that costs of the application be provided for.
5. The application is premised on the Claimant's supporting affidavit sworn on 28/2/2023 whereby it is deponed:-
  - a. that having been dismissed from employment and having been unemployed for five years, the Claimant had suffered financial constraints, and therefore inability to pay the ordered costs within the time limit ordered by the Court.
  - b. that the Claimant managed to pay the ordered costs on 23/1/2023, and was seeking the Court's indulgence for his suit to be heard
6. the application is opposed by the Respondent vide a replying affidavit of one Kajuju Marete sworn on 20/4/2023. It is deponed in the said replying affidavit:-
  - a. that the application is misconceived and bad in law, and is for striking out without merit consideration. That the application is brought under the Civil Procedure Rules which are not applicable to this Court, and that the Court's jurisdiction to determine the application has not been properly invoked.
  - b. that arising from this Court's Ruling of 28<sup>th</sup> October 2021, the suit herein would effectively stand dismissed as at 29<sup>th</sup> October 2022 if no payments would have been made.
  - c. that payment of the Respondent's assessed costs was made on 6/2/2023, way after the suit had effectively, by the lapse of time, been automatically dismissed by the non-compliance on the part of the Claimant.
  - d. that reinstatement of dismissed suit is an act of the Court's discretion, and that no valid reason has been availed by the Claimant as to why the Court should exercise its discretion to reinstate the claim.
  - e. that orders are not mere suggestions, and compliance goes to the root of access to justice. That the suit herein has been hovering over the Respondent's head for a period of about three years, and the Respondent Bank is prejudiced by that fact. That litigation must come to an end one way or the other.



7. Both parties filed written submission, for and against the application pursuant to the Court's directions in that regard, which I have considered.
8. While taking cognizance of the fact that the Claimant alleges to have been dismissed from employment about five years ago as the dismissal is pleaded to have occurred on 25<sup>th</sup> June 2018, I must reprimand the Claimant/Applicant for not being proactive over the suit herein. There appears to have been an element of indolence on his part. I say so because for over one year from the date of this Court's orders/ Ruling delivered on 28<sup>th</sup> October 2021, the Claimant did not make any attempt to move the Court to extend the timelines ordered and set by the Court, if at all he had financial challenges as he alleges. Indeed, the Claimant appears to have been woken up by the Mention Notice issued by the Court on 11<sup>th</sup> January 2023. As rightly deponed by the Respondent, Court orders are not mere suggestions. They are edicts which carry the force of law, and non-compliance thereof carries legal consequences. Court orders must always be obeyed and complied with, unless varied or set aside by the Court making them or by a higher Court on appeal.
9. The Claimant/Applicant is asking this Court to reinstate his suit and to vacate the orders made on 28<sup>th</sup> October 2021 dismissing the suit. What the Court gave on 28<sup>th</sup> October 2021 were self-executing orders by dint of which the suit herein would stand dismissed at a given time for non-compliance with those orders. It is always important for parties and Counsel to read and to understand Court Orders as made and/or pronounced, including the wording thereof.
10. I have also taken note of the fact that the present application was not filed within the time limit ordered by this Court on 8<sup>th</sup> February 2023.
11. Despite all the foregoing, I am inclined to give the claimant a final opportunity to access justice by way of prosecuting his suit herein. Towards this end, I will overlook the late filing of the application herein, the procedural flaws and apparent mistakes in the application. By dint of Article 159(d) of *the Constitution* of Kenya 2010, Justice shall be administered without undue regard to procedural technicalities. Further, Section 12(3) (viii) of the *Employment and Labour Relations Court Act* gives this Court power, in the exercise of its jurisdiction, to give appropriate reliefs as the Court may deem fit to grant.
12. Having said that, I allow the claimant's amended Notice of Motion dated 14<sup>th</sup> March 2023 in the following terms:-
  - a. The Claimant's suit herein is hereby reinstated.
  - b. The suit shall be prosecuted within six (6) months from the date of this Ruling, failing which it shall stand dismissed.
  - c. Costs of the application shall be in the cause.

13. It is so ordered

**DATED, SIGNED AND DELIVERED AT MOMBASA THIS 26<sup>TH</sup> OCTOBER 2023**

**AGNES KITIKU NZEI**

**JUDGE**

