



REPUBLIC OF KENYA



KENYA LAW
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**Otieno v Maseno University (Cause 300 of 2017)
[2023] KEELRC 2491 (KLR) (18 October 2023) (Ruling)**

Neutral citation: [2023] KEELRC 2491 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
CAUSE 300 OF 2017
S RADIDO, J
OCTOBER 18, 2023**

BETWEEN

JOSEPH PAUL OTIENO CLAIMANT

AND

MASENO UNIVERSITY RESPONDENT

RULING

1. On 6 December 2022, the Court issued certain directions to progress the Cause to hearing and set mention on 15 December 2022 to confirm compliance and give a hearing date. The Claimant's advocate on record was present during the session.
2. When the Cause was called on 15 December 2022, the Claimant was not represented.
3. The Court directed that the hearing proceeds on 6 February 2023 and the Respondent was ordered to serve a hearing notice upon the Claimant.
4. On 6 February 2023, when the Cause was called for a hearing, the advocate for the Respondent informed the Court that he had served the Claimant with a hearing notice and that the service had been acknowledged.
5. Despite the service, the Claimant was not present nor represented. The Respondent applied to have the Cause dismissed and the Court obliged the request.
6. On 23 August 2023, the Claimant filed a Motion seeking orders:
 - (1) ...
 - (2) That the Honourable Court be pleased to reinstate this suit for hearing on the merit.
 - (3) Costs of this application be in the cause.



7. The main grounds in support of the application were that the advocate with the brief had been involved in an accident and that the advocate he had tasked to prosecute the Claimant's case mistakenly appeared before the Deputy Registrar instead of the Court and that by the time he had been redirected, he found that the Cause had been dismissed.
8. The Respondent filed a replying affidavit in opposition to the Motion on 5 September 2023. In the affidavit, it was averred that the Claimant had not taken any active steps to prosecute the Cause for nearly 7 years, the Claimant was aware of the session when the hearing date was fixed but had neglected to attend Court; the Claimant had failed to comply with court orders and that there was inordinate delay in filing the application.
9. The Claimant did not file submissions within the agreed timelines (while the Respondent filed its submissions on 4 October 2023).
10. The Court has considered the record, application, affidavits, and submissions.
11. When the Cause first came up for directions on 6 March 2018, the Claimant was not represented. The Court rescheduled the Cause to 12 April 2018. On 12 April 2018, the Claimant informed the Court that he had not served the Respondent with a Notice of Summons.
12. On 29 October 2019, the Claimant's advocate fixed the Cause for mention on 19 February 2020. On the said date, the Claimant's advocate did not attend Court and the Court directed that a Notice to Show Cause for dismissal should be issued.
13. The next time the Cause came up on 20 July 2020 at the instigation of the Court, none of the parties was present. The Deputy Registrar fixed the Cause for hearing on 30 September 2020.
14. The Claimant's advocate appeared on 30 September 2020 before the Deputy Registrar and the hearing was rescheduled to 16 February 2021.
15. The Claimant and/or his advocate did not attend the Court on the hearing date and the Deputy Registrar set a mention date of 30 March 2021.
16. None of the parties attended the Court on 30 March 2021 and the Cause was rescheduled to 19 May 2021.
17. The parties did not appear on 19 May 2021. They equally did not attend Court sessions on 16 November 2021, 19 January 2022, 13 April 2022, and 5 July 2022.
18. On 26 July 2022, the Respondent's advocate attended before the Deputy Registrar and the mention was fixed for 21 September 2022. There were no appearances on this latter date.
19. The Claimant appeared before the Deputy Registrar on 23 November 2022 and prayed for a hearing date. The Deputy Registrar directed that the parties appear before the Judge on 6 December 2022 for further directions.
20. The parties appeared as directed and the Court gave certain directions with mention set for 15 December 2022 to confirm compliance and give a hearing date.
21. The directions were not complied with and on 15 December 2022, the Court issued further directions and fixed a hearing for 6 February 2023.
22. As already indicated, the Claimant did not attend the hearing despite service, and the Cause was dismissed.



23. The foregoing indicates casualness and indolence on the part of the Claimant in prosecuting the Cause.
24. The Claimant failed to file submissions in relation to the instant application despite clear orders. On several occasions, he was not represented in Court. He also failed to comply with court orders issued to achieve an expedited and proportionate determination of the Cause.
25. It is instructive that the Court had earlier on 19 February 2020 issued a Notice to Show Cause.
26. Further, an advocate ought to know that hearing of Causes proceeds before a Judge and not the Deputy Registrar. To that end, the Court publishes cause list that direct the parties as to which judge or judicial officer a given Cause would be called out.
27. The Claimant did not disclose whether he made any reference to the cause list for the day.
28. Lastly, the Cause was dismissed on 6 February 2023 and the Claimant admits that they were alerted about the dismissal on the same day of the dismissal.
29. The instant application was filed some 6 months later and the Court finds inordinate delay.

Conclusion and Orders

30. Considering the above, the Court finds no merit in the application and it is dismissed with costs.

DELIVERED VIRTUALLY, DATED, AND SIGNED IN KISUMU ON THIS 18TH DAY OF OCTOBER 2023.

RADIDO STEPHEN, MCIARB

JUDGE

Appearances

For Claimant Mathai Maina & Co. Advocates

For Respondent Joy Akoth Akinyi, Advocate, Legal Department, Maseno University

Court Assistant Everlyne

