



**Adhola v Victoria Inter-Diocesan Investment Co Ltd (Cause  
415 of 2017) [2023] KEELRC 2455 (KLR) (12 October 2023) (Ruling)**

Neutral citation: [2023] KEELRC 2455 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU  
CAUSE 415 OF 2017  
S RADIDO, J  
OCTOBER 12, 2023**

**BETWEEN**

**JENIFER AKINYI ADHOLA ..... CLAIMANT**

**AND**

**VICTORIA INTER-DIOCESAN INVESTMENT CO LTD ..... RESPONDENT**

**RULING**

1. The Court dismissed the Cause on 24 February 2022.
2. On 15 May 2023, the Claimant filed a Motion seeking orders:
  - (a) That the Court order dismissing this suit made on 24<sup>th</sup> February 2022 be set aside.
  - (b) That the suit be restored to hearing and be heard on its merit.
  - (c) That the cost of this application be provided for.
3. The grounds advanced by the Claimant in support of the application were that when the Cause came up for hearing on 14 February 2022, the Claimant requested for an adjournment which was allowed on terms that were complied with save for payment of adjournment fees which could not be paid in time due to technical challenges; the failure to pay the adjournment fees was not intentional and that the interests of justice tilted towards granting the Claimant an opportunity to be heard.
4. When the application came up for directions on 26 June 2023, the Court directed the Respondent to file and serve a response and further that the parties file and exchange submissions. The ruling was set for 4 October 2023.
5. The Respondent filed a replying affidavit in opposition to the Motion on 30 June 2023, wherein it was deponed that the application was unmerited because the Claimant had failed to adhere or comply with Court orders issued on 8 October 2019; the Claimant had sought and secured adjournments when the



- Cause came up for hearing on 25 February 2019, 8 October 2019 and 14 February 2022; the Court had granted the last adjournment on 8 October 2019; the Claimant had not paid the costs and expenses ordered on 24 February 2022 and there had been inordinate delay in filing the application.
6. The Claimant filed her submissions dated 7 July 2023 and the Respondent's submissions were dated 4 October 2023.
  7. In her submissions, the Claimant urged the Court to consider the principles enunciated in *Ivita v Kyumbu* (1984) eKLR; *Philip Chewolo & Ar v Augustine Kubedde* (1982-1988) KLR 103 and *John Nabashon Mwangi v Kenya Finance Bank Ltd (in liquidation)* (2015) eKLR.
  8. The Respondent on the other hand urged the Court to consider the holdings in *Njue Njagi v Ephantus Njiru & Ar* (2016) eKLR and *Joseph Oduor Anode v Kenya Red Cross Society* (2012) eKLR. The Respondent also cited the decisions relied on by the Claimant.
  9. When the Court retreated to prepare the Ruling, it could not trace the file. Attempts by the registry to trace the file also came a cropper and on 4 October 2023, the Court directed that a skeletal folder be opened and the parties provide the Court with copies of the applications, affidavits, and submissions (the registry retrieved some of the records from the e-filing system).
  10. The Court is satisfied that on the material made available, it can competently prepare and deliver this Ruling.
  11. The legal principles governing the consideration of applications as the instant one are well settled.
  12. The Court should consider primarily the delay and explanations for the delay, whether the delay has caused prejudice and the desire to do substantive justice.
  13. In the case at hand, the Court ordered the Claimant on 14 February 2022 to pay Court adjournment fees and reimburse the Respondent certain expenses ahead of the hearing on 24 February 2022.
  14. The Claimant did not pay the adjournment fees within the stipulated time. The fees were only paid on 7 March 2022, after the Cause had been dismissed.
  15. The Court had earlier on 8 October 2019, directed the Claimant to pay the Respondent's costs of Kshs 5,000/- and air ticket costs before the next hearing. The hearing was fixed for 15 June 2020.
  16. The Kshs 5,000/- costs were only paid on 7 March 2023.
  17. The available record also indicates that the Claimant had secured adjournments on 25 February 2019 and 8 October 2019, when the last adjournment was granted. The Claimant was also not ready on 14 February 2022, as it had not complied with previous Court orders.
  18. The Cause was dismissed on 24 February 2022. The instant application seeking the setting aside of the dismissal order was filed on 20 June 2023, nearly one and a half years later.
  19. The Claimant has not offered any explanation at all for the delay and the Court therefore finds the delay inordinate.

### **Conclusion and Orders**

20. The primary order sought by the Claimant was and is a discretionary order.
21. Considering the foregoing, the Court finds no merit in the application nor a foundation to exercise its discretion in favour of the Claimant.



22. The Motion dated 15 May 2023 is dismissed with costs.

**DELIVERED VIRTUALLY, DATED, AND SIGNED IN KISUMU ON THIS 12<sup>TH</sup> DAY OF OCTOBER 2023.**

**RADIDO STEPHEN, MCIARB**

**JUDGE**

Appearances:

For Claimant Mwakio Kirwa & Co. Advocates

For Respondent Amelia Inyangu & Partners Advocates

Court Assistant Chrispo/ Everlyne

