



**Nyambu v China City Ltd (Cause 896 of 2017)
[2023] KEELRC 2420 (KLR) (5 October 2023) (Ruling)**

Neutral citation: [2023] KEELRC 2420 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
CAUSE 896 OF 2017
AK NZEI, J
OCTOBER 5, 2023**

BETWEEN

JAPHET NYAMBU CLAIMANT

AND

CHINA CITY LTD RESPONDENT

RULING

1. The suit herein came up for hearing before me on 14/2/2023, and there being no appearance for both parties herein, I dismissed the suit for non-attendance. At 11:25 am on the same date while the court was still in session, Counsel for the claimant (Mr. Gichana) appeared virtually and informed the court that he had had network problems and did not manage to log onto the court’s virtual platform/session in time.
2. On 28/2/2023, the claimant filed a notice of motion dated 14/2/2023, seeking reinstatement of the dismissed suit herein. The application is supported by affidavits of Edward Gichana Advocate and Japhet Nyambu, sworn on 14/2/2023 and 16/2/2023 respectively.
3. It is deponed in the said two supporting affidavits that Counsel for the claimant had network challenges on 14/2/23 and did not manage to address the court virtually in the morning of the hearing date, leading to dismissal of the suit for non-attendance. The claimant deponed that he turned up in the Advocate’s offices in the morning of the hearing date, ready for the hearing, and logged onto the court’s online platform. He did not, however, state why he did not respond when his case was called out for hearing. I will not, however, hold this against the claimant as he was represented in the suit by Counsel.
4. The Respondent did not oppose the application, though the same is shown to have been served. The application therefore stands unopposed, and I allow the same in the following terms:-
 - a. the dismissal order dated 14/2/2023 is hereby set aside, and the claimant’s suit is hereby reinstated.



- b. the suit shall be prosecuted within 90 days, from the date of this ruling, failing which it shall stand dismissed.
- c. costs of the application shall be in the cause.

5. It is so ordered.

DATED, SIGNED AND DELIVERED AT MOMBASA THIS 5TH OCTOBER 2023

AGNES KITIKU NZEI

JUDGE

ORDER

This Ruling has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of the applicable court fees.

AGNES KITIKU NZEI

JUDGE

