



**Kapule v Milly Glass Works Limited (Cause 640 of 2016)
[2023] KEELRC 2476 (KLR) (4 October 2023) (Ruling)**

Neutral citation: [2023] KEELRC 2476 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
CAUSE 640 OF 2016
M MBARÚ, J
OCTOBER 4, 2023**

BETWEEN

SIMON ODIKARA KAPULE CLAIMANT

AND

MILLY GLASS WORKS LIMITED RESPONDENT

RULING

1. The claimant filed application dated June 15, 2023 on the grounds that the orders of June 15, 2023 dismissing the claim for non-attendance be set aside and the suit be reinstated for hearing. The application is supported by the claimant's affidavit and on the grounds that the matter was scheduled for hearing on June 15, 2023 and he proceeded to his advocates office for the virtual court attendance but he was faced with internet challenges and was admitted to the court session at 9.06am when the court had already commenced proceedings and the matter called and dismissed for non-attendance. It was not his mistake but that of the advocate to fail to attend court and should be given the opportunity for a hearing and the orders dismissing the claim are prejudicial.
2. The respondent advocate attended and opted to have the court address and give directions.
3. The written ruling herein is to allow the court to give a proper background in this matter culminating to orders of June 15, 2023.
4. First, this is a 2016 matter and for one reason or the other including the claimant not attending court, it has not concluded.
5. Secondly, the court on its own initiatives has issued hearing dates but the claimant has consistently failed to attend. On September 19, 2019 parties attended court and requested to proceed for mediation and a mention date on November 7, 2019 but on the due date, the claimant failed to attend court. On June 17, 2021 and July 13, 2022 when parties were allocated a hearing date, there was no attendance. The court allocated hearing date on October 26, 2022 and only the respondent attended.



6. Finally, the issue of non-attendance on the part of the claimant is not new. It has been a persistent matter leading to the court issuing a notice to show cause why the suit should not be dismissed for want of attendance and prosecution on April 25, 2023 and only the respondent attended. A further date was allocated for May 18, 2023 and again, only the respondent attended.
7. In dismissing the claim on June 15, 2023, the court took note of these lapses on the part of the claimant. It cannot be that every time a hearing date is allocated, there is no attendance but on June 15, 2023 he only logged into the virtual court session and the matter had already been called.
8. As the Cause List for June 15, 2023 can confirm, this was one of the last matters listed for the day after the scheduled hearings, applications and mentions. Where indeed the claimant logged into the online platform at 9.06 hours, he had ample and sufficient time to make his attendance taken into account. The extract from the proceedings for the day, the online recordings do not capture the claimant or the firm of advocates representing him herein. The record confirms non-attendance.
9. The claimant, in his affidavit does not address all the non-attendance lapses as set out above. Since the year 2016, he cannot justify the lack of interest to urge his case over the years until summoned by the court to show good cause which is lacking.
10. Taking the above into account, the suit was properly dismissed for want of attendance and prosecution.
11. The application dated June 15, 2023 is without merit and there is no matter to justify a reinstatement of the suit and is hereby dismissed with costs to the respondent.

DELIVERED IN OPEN COURT AT MOMBASA THIS 4TH DAY OF OCTOBER 2023.

M. MBARŪ

JUDGE

