



REPUBLIC OF KENYA



**KENYA LAW**  
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**Joel v G North & Son Ltd (Cause 644 of 2016)  
[2023] KEELRC 3442 (KLR) (22 November 2023) (Ruling)**

Neutral citation: [2023] KEELRC 3442 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 644 OF 2016  
NZIOKI WA MAKAU, J  
NOVEMBER 22, 2023**

**BETWEEN**

**SAMUEL NDUNGA JOEL ..... CLAIMANT**

**AND**

**G NORTH & SON LTD ..... RESPONDENT**

**RULING**

1. The Claimant seeks through his notice of motion application dated 8<sup>th</sup> May 2023 for reinstatement of his suit. The suit was set for hearing on 8<sup>th</sup> March 2023 and was dismissed for non-attendance. He asserts that the circumstances that led him to be marked as absent when the matter came up for hearing on 8<sup>th</sup> March 2023 were inadvertent and that he stands to suffer irreparable prejudice should the application be disallowed. He asserts that in the interests of justice this suit be heard to its logical conclusion to allow true triable issues between the parties tried and determined.
2. The Respondent was opposed and filed a replying affidavit sworn by Mr. E. M. Kariuki on 17<sup>th</sup> August 2023. In it, the Respondent vehemently opposed the application on grounds inter alia that no sufficient cause had been shown by the Claimant to warrant a grant of the order of reinstatement.
3. The application was disposed of by way of written submissions. The Claimant submitted that the issues for determination are whether the applicant has demonstrated reasonable grounds for the reinstatement of the suit and whether the Respondent will suffer prejudice if the suit is reinstated. He cited the case of *Niraj Dharmadhikhari v Professional Media Africa Limited* eKLR which cited with approval the case of *Pitbon Waweru Maina v Tbuka Mugiria* [1983] eKLR. He further cited the case of *Belinda Murai & 9 others v Amos Wainaina* [1979] eKLR and that of *Reynolds Construction Co (Nig.) Ltd v Festus M'Arithi M'Mboroki* [2022] eKLR. The Claimant argued that on the basis of these authorities the court should permit reinstatement of the suit. In the case of *Julius Kibiwott Tuwei v Reuben Argut & 7 others* [2022] eKLR it was held that whilst applying the principles on reinstatement of a suit, a court must bear in mind the object of doing substantial justice to all the parties



concerned and that technicalities of law should not prevent the court from doing substantial justice and doing away with the illegality perpetuated on the basis of the judgment impugned before it. The Claimant submitted that a mistake is a mistake and no less a mistake because it is an unfortunate slip. The Claimant submitted that he has always acted in good faith and followed up the matter to ensure it was heard to its rightful conclusion and has never missed court. The Claimant submitted that he will suffer injustice if he is driven away from the seat of justice unheard if the orders of dismissal are not reversed. He urged the grant of the prayers in his motion.

4. The Respondent on its part submits that the Claimant had not shown sufficient cause to warrant the exercise of this court's discretion in reinstating the suit. The Respondent submits that the Claimant deponed that the case was the first on the cause list and the court was meant to commence sitting at 9.00am and that on that date his advocates logged in, however the court started at around 9.30am and they were not aware of any notice of delay. The Respondent submits that practice directions issued indicate the parties are required to log in at least fifteen minutes before the commencement of the session and that there was no prejudice occasioned to the Applicant by logging in thirty minutes before the court session commenced. The Respondent submitted that the start of the court session thirty minutes late should in fact be construed to the advantage of the Claimant and cannot therefore suffice as the reason why the Claimant and his advocate were unable to address the court as alleged. The Respondent cited the case of *Margaret Ndunge Kioko v Manase Ananda Caleb* [2021] eKLR as well as the cases of *Edney Adaka Ismail v Equity Bank Limited* [2014] eKLR and *Daniel Wekesa Wanyama v Teachers Service Commission* [2021] eKLR to argue that the Claimant had not demonstrated that he was keen to have his case heard and concluded in light of his conduct on the date of hearing. The Respondent submitted that the application was also not made without undue delay as the application was filed more than 2 months from the date of dismissal. The Respondent cited the case of *Utalii Transport Company Limited & 3 others v NIC Bank Limited & another* [2014] eKLR where the court held that it is the responsibility of the plaintiff to take steps to progress their case. The Respondent further cited the cases of *Gideon Sitele Konchella v Daima Bank Limited* [2013] eKLR and *Bilha Ngonyo Isaac v Kembu Farm Ltd & another* [2013] eKLR to urge the Claimant's failure to prosecute his case without any reason whatsoever constitutes abuse of court process.
5. The provisions of the law on reinstatement are premised on the applicant availing to court compelling reasons for the exercise of the discretion to reinstate. In this case, the Claimant asserts that the Court started its proceedings 30 minutes after the time scheduled on the cause list and therefore he did not attend. As noted by the Respondent, parties are required to log into the virtual court session where court is online at least 15 minutes before the scheduled time for the matter. In this case, the Claimant ought to have been in court by 8.45am. In my considered view, failing to be present at even a later time than 9.00am when the case was due cannot be said to be sufficient reason for reinstatement. The Claimant asserts he had even travelled to Nairobi to be available to attend the matter and it is confounding that he was unavailable on 8<sup>th</sup> March 2023. He took his sweet time to file the motion to reinstate further cementing the view taken by the court of the manner he has conducted himself in the matter as lackadaisical and at best pedestrian yet he claims he has a cogent claim against the Respondent. The long and short of the foregoing is that the Claimant's application not meritorious and is denied. Costs to the Respondent.

It is so ordered.

**DATED AND DELIVERED AT NAIROBI THIS 22<sup>ND</sup> DAY OF NOVEMBER 2023**

**NZIOKI WA MAKAU**

**JUDGE**

