



Wasike v Livingstone Security Ltd (Employment and Labour Relations Cause E2325 of 2017) [2023] KEELRC 2980 (KLR) (17 November 2023) (Ruling)

Neutral citation: [2023] KEELRC 2980 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS CAUSE E2325 OF 2017
AN MWAURE, J
NOVEMBER 17, 2023**

BETWEEN

MARTIN WASIKE CLAIMANT

AND

LIVINGSTONE SECURITY LTD RESPONDENT

RULING

1. The notice of motion dated 29th November 2021 the claimant is praying that the dismissal of claim on 3rd November 2021 to be reviewed or set aside and the claim be set down for hearing.
2. The deponent Wilberforce Khalwale states he has made several efforts to set down the matter for hearing. He has produced affidavit marked WK-2 which he avers explains the efforts made to set down the case for hearing.
3. The affidavit deponed by Wilberforce Khalwale and the annexed documents establish that on various dates ranging 2017 to 2021 the claimant's counsel made efforts to set down the case for hearing.

The respondent's response

4. The respondent was given several opportunities to file response but did not do so.

Analysis and determination

5. The court will give the claimant an opportunity to prosecute his case because from the affidavit deponed by his counsel Wilberforce Khalwale demonstrates the counsel made efforts to set the case for hearing in the course of time.
6. There are documents in court file pertaining to the response by the court like one (not showing the year)but stating the court was giving priority to 2016 matters. The claimant's advocate filed for the reinstatement of the suit on 9th November 2021 and it is not clear how come the application has never



been heard since 2021 to date. Anyhow the court will give the claimant a small window to reinstate his case and set down for hearing within 30 days failure of which this order will lapse and the suit will remain dismissed.

Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 17TH DAY OF NOVEMBER, 2023.

ANNA NGIBUINI MWAURE

JUDGE

ORDER

In view of the declaration of measures restricting Court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open Court. In permitting this course, this Court has been guided by Article 159(2)(d) of the Constitution which requires the Court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of Section 1B of the Procedure Act (Chapter 21 of the Laws of Kenya) which impose on this Court the duty of the Court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

A signed copy will be availed to each party upon payment of Court fees.

ANNA NGIBUINI MWAURE

JUDGE

