



**Buvusi v Thomas & Piron Limited (Cause 966 of 2018)
[2023] KEELRC 3277 (KLR) (8 December 2023) (Ruling)**

Neutral citation: [2023] KEELRC 3277 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 966 OF 2018
J RIKA, J
DECEMBER 8, 2023**

BETWEEN

GEOFFREY MUHITSI BUVUSI CLAIMANT

AND

THOMAS & PIRON LIMITED RESPONDENT

RULING

1. This Claim was scheduled by the Claimant ex parte, for hearing on 6th July 2022.
2. The Claimant attended Court in the presence of his Counsel Mr. Khalwale and was ready to give evidence on 6th July 2022.
3. Mr. Ngumo, Counsel holding brief for Counsel for the Respondent Mr. Dachi, sought adjournment, on the ground that Mr. Dachi had been taken ill.
4. Adjournment was allowed with witness expenses for the Claimant granted, at Kshs. 3,000 and costs for the day to Mr. Khalwale at Kshs. 2,500.
5. Hearing was rescheduled in the presence of both Counsel, to 5th December 2022. The Claimant and his Counsel did not attend Court on the hearing date. Mr. Omoro was present holding brief for Mr. Dachi for the Respondent. The Claim was dismissed for non-attendance with costs to the Respondent.
6. The Claimant filed an Application dated 5th December 2022 seeking reinstatement of the Claim. This Application was fixed for hearing on 27th July 2023 by the Claimant. The Respondent attended Court upon service of a hearing notice served by the Claimant.
7. The Claimant and his Counsel were again, not in attendance at the time the Application was called for hearing on 27th July 2023. The Court dismissed the Application and affirmed the orders issued earlier, dismissing the Claim.



8. The Claimant immediately filed an Application dated 27th July 2023, asking the Court to review and set aside the orders of dismissal of the Application, made on 27th July 2023.
9. The Application is founded on the Affidavit of Counsel for the Claimant, Mr. Wilberforce Khalwale, sworn on 27th July 2023.
10. Mr. Khalwale explains that he logged in at 9.00 a.m. He was only admitted at 10.18 a.m. on the material date. The Application had already been called out and dismissed. Mr. Khalwale states that he later on the same day, was able to address the Court, and explained his absence earlier.
11. The Application is opposed through the Replying Affidavit of Evelyn Timothy, Human Resource Manager of the Respondent, sworn on 16th October 2023.
12. Timothy states that the Claimant is a perennial litigant, who has been indolent in prosecuting his Claim. The Claim was dismissed on 5th December 2022 for the Claimant's non-attendance. The Claimant filed an Application on the same date seeking reinstatement of the Claim. It was scheduled for hearing on 27th July 2023. The Claimant again failed to attend Court to prosecute the Application. The Court should not be taken for a ride, the Claim having been dismissed for want of prosecution. The Claimant's Counsel has not offered evidence, to show that he was logged in on time, and that there was delay in admitting him.
13. Parties agreed to have the Application heard and considered on the strength of their Affidavits and Submissions. They confirmed filing and exchange of Submissions at the last mention on 8th November 2023.

The Court Finds: -

14. The Submissions filed by the Claimant, dated 13th October 2023, appear to be inconsistent with the Supporting Affidavit, sworn by Counsel Mr. Khalwale.
15. The Claimant submits that: -The Application before the Court is dated 27th July 2023. The suit was dismissed on NTSC when the Claimant's Advocate failed to attend Court, and offer an explanation why the suit should not be dismissed. The Advocate failed to attend Court because he was not notified by the Respondent's Advocates. The case was dismissed on 10th July 2023. The Claimant came to learn of it much later. Although the Respondent's Advocates attended Court on mention on 22nd May 2022, when the NTSC issued, the Respondent's Advocates did not notify the Claimant's Advocates of the Court's directions. The Claim was dismissed ex parte. Secondly, failure by Counsel to attend Court was an excusable mistake that should not be visited upon the Claimant. The Claimant's Counsel logged in at 9.00 a.m. but was admitted at 10.18 a.m. when the matter had already been called and dismissed.
16. At the tail end of the Claimant's Submissions, he reiterates that "The Claimant's Advocates have denied being served with a notice to attend Court. The Respondent has not denied or controverted this fact and there is no demonstration to show that the Claimant's Advocates were served. There is no proof of service."
17. The record indicates that the Claim was fixed by the Claimant for hearing on 22nd May 2022. Hearing was scheduled for 6th July 2022, when Mr. Dachi was taken ill. It was adjourned to 5th December 2022 when the Claimant failed to attend Court, and the Claim dismissed for non-attendance. The Claimant then made an Application dated 5th December 2022 seeking reinstatement of the Claim, which came up for hearing on 27th July 2023. The Application was dismissed for non-attendance.



18. The Court does not understand the Submissions filed by the Claimant, which allege lack of service of a notice by the Respondent, for the Claimant to attend Court, leading to dismissal of the Claim. The Court does not have record of dismissal of the Claim, upon issuance of a NTSC. These Submissions by the Claimant are inconsistent with the record, and the Affidavit relied upon by the Claimant.
19. This Claim was filed in 2018. There have been significant defaults on the part of the Claimant, in prosecuting his Claim. He does not seem to have clarity of thought on the record. He does not have adequate explanation on failure to attend Court on 5th December 2022, when the Claim was dismissed for non-attendance. The hearing date had been obtained by consent before the Court, on 6th July 2022.
20. The Claimant then filed an Application dated 5th December 2022, seeking reinstatement of the Claim. The Application was scheduled for hearing on 27th July 2023. Mr. Khalwale states that he was admitted late, having logged in at 9,00 a.m. He does not explain why he did not call his counterpart, or the Court Assistant, enquiring about his admission, and the hearing of the Application, on 27th July 2023. From 9.00 a.m. to 10.18 a.m. Mr. Khalwale states he was just waiting in the lobby to be admitted. The daily cause list for the day shows there were 13 matters for mention, 4 Applications and 4 Part-heard – a total of 21 matters. How was Mr. Khalwale alone, denied admission until 10.18, while 20 others were admitted from the opening of the day's proceedings at 9.00 a.m.?
21. If it is true that admission was delayed, there is no explanation from Counsel, what he did in pursuit of admission. There is no evidence of contact to the Court, or to the other Counsel in the matter, or any other Counsel on the platform, made by Mr. Khalwale, if only to enquire why he was not being admitted like the others.
22. The Court is not able to accommodate the Claimant further, this Claim having been filed way back in 2018. The Submissions filed by the Claimant are not consistent with the Affidavit sworn by Mr. Khalwale.

It is ordered: --

- a. The Application filed by the Claimant dated 27th July 2018 is declined.
- b. Costs to the Respondent.

DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY, AT NAIROBI, UNDER PRACTICE DIRECTION 6[2] OF THE ELECTRONIC CASE MANAGEMENT PRACTICE DIRECTIONS, 2020, THIS 8TH DAY OF DECEMBER 2023.

JAMES RIKA

JUDGE

