



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAIROBI

CAUSE NO. 2288 OF 2017

(Before Hon. Lady Justice Anna Ngibuini Mwaure)

JAMES MWENDA KINYANJUL.....CLAIMANT

VERSUS

ALL IN ONE SOFTWARE (EA) LIMITED...RESPONDENT

RULING

1. The Claimant filed a notice of motion application dated 3rd November, seeking the following orders for this Honourable Court.

SPENT

- a. That this Honourable Court be pleased to set aside or review its order issued on 2nd November, 2021 dismissing Claimant's suit for want of prosecution and all consequential orders.
- b. That the Honourable Court do issue an order reinstating the plaintiff's suit for hearing on its merits.
- c. That the costs be provided for.

CLAIMANT'S CASE

2. The Claimant evidence is that they were served with a notice to show cause why the suit should not be dismissed for want of prosecution.

That they prepared the replying affidavit on 28th October, 2021.

3. That however the hearing date was erroneously entered in their advocates diary on 3rd November, 2021. That the application was heard on 2nd November, 2021 and was dismissed for want of prosecution.

4. The Claimant prays that the suit be reinstated and be heard on merits as the Claimant missed the hearing date unintentionally.

The affidavit of Charles Kangethe Advocates deponed on 3rd November, 2021 is in support of that application.

RESPONDENT'S CASE

5. The Respondent filed a replying affidavit on 14th December, 2021 whereby **MR. PETER KITHEKA** the deponent avers that the Claimant's failure to prosecute the case is unjustifiable and inexcusable.

DECISION

6. After considering the Claimant's application and response by the Respondent and the Respondent and Claimant's submissions, I note that the court dismissed the Claimant's case on 2nd November, 2021.

The Claimant's advocates says his office marked the wrong dates in the diary. The same day the Claimant made an application to reinstate

the suit.

7. The court has discretion under order 33 of Employment and Labour Relations Court Rules to review its Judgement or Ruling.

8. Noting that a right to a hearing (of the parties) is a well-protected right in our constitution and also that it is a cornerstone of the rule of law and taking into consideration that Claimant acted diligently in filing the application for reinstatement the same day it was dismissed, I find merit in granting the application for setting aside its order of 2nd November, 2021 dismissing the Claimant's suit for want of prosecution.

9. The parties are referred to the Deputy Registrar on 4th May, 2022 to take an early date and proceed with the hearing without any unnecessary delay.

10. Orders accordingly.

DELIVERED, DATED AND SIGNED IN NAIROBI THIS 31ST DAY OF MARCH, 2022

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 Civil 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