



**Kenya County Government Workers Union v County Public Service Board, Kisii  
County (Cause 235 of 2015) [2022] KEELRC 14680 (KLR) (23 March 2022) (Ruling)**

Neutral citation: [2022] KEELRC 14680 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU  
CAUSE 235 OF 2015  
S RADIDO, J  
MARCH 23, 2022**

**BETWEEN  
KENYA COUNTY GOVERNMENT WORKERS UNION ..... CLAIMANT  
AND  
COUNTY PUBLIC SERVICE BOARD, KISII COUNTY ..... RESPONDENT**

**RULING**

1. The Kenya County Government Workers Union (the Union) sued the County Public Service Board, Kisii (the Board) on 6 July 2015, and it stated the Issue in Dispute as:  
  
Unlawful dismissal of Eight (8) employees of the former Masimba Town Council – a sub-county of Kisii County Government.
2. The Board filed a Reply on 10 May 2017 (it was admitted out of time on 5 December 2018), wherein it was pleaded that the action was statute time-barred.
3. When the Cause came up for hearing on 4 February 2021, the Union was not present, but the Grievants were present. The Court adjourned the hearing to 26 April 2021. The Union was directed to pay adjournment fees.
4. The hearing did not proceed, and on 27 August 2021, the Union caused the hearing to be fixed for 15 November 2021.
5. None of the parties appeared, and the Court directed a Notice to Show Cause to issue why the suit should not be dismissed. The return date was set for 23 November 2021.
6. The parties did not attend the Court, and the Court dismissed the suit.
7. Aggrieved, the Union filed a Motion dated 24 November 2021 seeking orders:



- (1) ...
  - (2) That this Honourable Court be pleased to set aside the order made on November 23, 2021 dismissing the applicant's suit for want of prosecution.
  - (3) That the suit be reinstated for hearing on the merits.
  - (4) That costs of this application be provided for.
8. The ground in support of the application was that the Union's advocate on record upon receipt of the Notice to Show Cause had sent a replying affidavit to the court through email for assessment and filing on 22 November 2021, but there was no reply, and therefore on the material day, the advocate could not attend court as he was following up with the court registry.
  9. The advocate deponed that he managed to attend court after the Cause had been dismissed.
  10. When the Motion came for hearing on 14 December 2021, the Court directed the Board to file and serve a response. The response was not filed by the agreed timeline.
  11. The court also directed the parties to file and exchange submissions. The submissions were not filed.
  12. The court has considered the record, the Motion and supporting affidavit.
  13. The Union is seeking an exercise of the court's discretion.
  14. On 4 December 2021, the Union's advocate was not in court for the hearing of the Cause. No explanation has been offered for the absence.
  15. The court thus directed the Union to pay adjournment fees. There is nothing on record to show that the adjournment fees were paid.
  16. On the application's merits, the Union did not explain why its advocate opted to go to the registry instead of appearing in court and informing the court of his predicament. The Court does not find the explanation satisfactory.
  17. Although the parties have not addressed the court on the plea of limitation raised by the Board and without the court determining the question, the court notes that the alleged cause of action accrued on 29 July 2009, while the Memorandum of Claim was filed in court on 6 July 2015, some 6-years after the event.
  18. The parties may wish to look at the decision of the Court of Appeal in *Rift Valley Railways (Kenya) Ltd v Hawkins Wagunza Musonye & ar* (2016) eKLR, where the court held:

While there is no doubt that section 15 of the Employment and Industrial Relations Act encourages alternative dispute resolution, it must be court-based and conducted within the law. Time does not stop running merely because parties are engaged in out of court negotiations. It was incumbent upon the respondents to bear in mind the provisions of section 90 of the Employment Act even as they engaged in the negotiations. The claim went stale three years from the date of the termination of the respondents' contracts of service.
  19. The court does not find the explanation offered by the Union satisfactory. It has also failed to comply with orders on payment of adjournment fees.
  20. The court declines to exercise its discretion in favour of the Union.
  21. The Motion is dismissed with no order on costs as the Board did not respond.



**DELIVERED THROUGH MICROSOFT TEAMS, DATED AND SIGNED IN KISUMU ON THIS  
23<sup>RD</sup> DAY OF MARCH 2022.**

**Radido Stephen, MCI Arb**

**Judge**

**Appearances**

For Union Benard Odero & Co. Advocates

For the Respondent did not appear

Court Assistant Chrispo Aura

