



**Ogolla v Kenya Institute for Public Policy Research and Analysis (Cause
2421 of 2016) [2022] KEELRC 1540 (KLR) (27 May 2022) (Ruling)**

Neutral citation: [2022] KEELRC 1540 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 2421 OF 2016**

J RIKA, J

MAY 27, 2022

BETWEEN

NICHOLAS OTIENO OGOLLA CLAIMANT

AND

**KENYA INSTITUTE FOR PUBLIC POLICY RESEARCH AND
ANALYSIS RESPONDENT**

RULING

1. The claimant testified and rested his case, in the absence of the respondent on January 19, 2022.
2. The hearing date was taken by the claimant's advocates in the absence of their counterparts.
3. There is an affidavit of service on record, establishing service of the hearing notice.
4. Hearing proceeded virtually.
5. The respondent filed an application dated February 24, 2022, founded on the affidavit of Roy Mwenesi, learned counsel for the respondent, sworn on even date.
6. He explains that he was waiting in the lobby on January 19, 2022, when the hearing proceeded. He was not admitted. He made attempts to contact the Court Assistant Emmanuel Kiprono, who advised that hearing would start at 10.00 a.m., and hence the Counsel should keep waiting in the lobby. Counsel has exhibited extracts of WhatsApp messages exchanged between him and Court Assistant, Emmanuel Kiprono.
7. The application is opposed through the affidavit of the claimant, sworn on March 8, 2022. He states that hearing notice was duly served, and that the respondent and its Counsel were absent, when hearing proceeded at 10.00 a.m. It is also the position of the claimant, that the application was filed late. Counsel for the respondent was informed by the court on January 19, 2022, that hearing had proceeded



ex parte, and that he should file the necessary application. The application was filed more than a month later, on February 24, 2022.

8. Parties agreed to have the application considered and determined on the strength of their affidavits and submissions.

The Court Finds: -

9. The whatsapp messages between Counsel Roy Mwenesi and Court Assistant Emmanuel Kiprono, support the position, that Counsel was waiting in the lobby for admission, when hearing proceeded on January 19, 2022.
10. At 9.16, Counsel wrote to Kiprono: “ Please let me in on Justice Rika’s zoom. I have been waiting from 9.00 a.m.”
At 9.17 a.m. Kiprono replied: “Be on the lobby.”
At 9.19 a.m. Counsel Mwenesi wrote: “Am on the lobby.”
At 9.26 a.m. Counsel wrote: “Is the court on. Why am I not being admitted into court?”
At 9.29 a.m. Kiprono wrote: “ court will start at 10.00 a.m.”
11. The court started at 10.00 a.m. Counsel wrote to Kiprono at 11.09 a.m. stating that he was admitted after the matter had been dealt with.
12. These messages show there was an error, with regard to admission of the Counsel for the respondent. The issue is not about fixing of the hearing date, or service of the hearing notice; it is whether Counsel for the respondent was waiting in the lobby, and was not admitted to the proceedings by the court. It may be that Counsel was not in the lobby at exactly 9.00 a.m. when the court ordinarily admits all those waiting in the lobby. Once admission is made, and proceedings begin, it is possible for the Judge or other Presiding Officer, who is entrusted the role of making the admissions, to overlook the new entrants. Focus of the Judge is on the proceedings already going on.
13. It would have perhaps been prudent for the court Assistant to alert the Judge, at the time the matter was called, that Counsel for the respondent was waiting in the lobby. Failing that, Counsel for the claimant ought to have been aware of the respondent’s counsel’s presence in the lobby, and alerted the court. Ex- parte proceedings would have been avoided.
14. Apologies of the court go to Counsel for the respondent.
It is ordered: -
 - a. The ex parte proceedings of the court, of January 19, 2022 are set aside.
 - b. The claim to be heard afresh.
 - c. Costs in the cause.

DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY, AT NAIROBI, UNDER THE MINISTRY OF HEALTH AND JUDICIARY COVID-19 GUIDELINES, THIS 27TH DAY OF MAY, 2022.

**JAMES RIKA
JUDGE**

