



**Muli v Twiga Costruction Company Limited (Cause 633 of 2015)  
[2022] KEELRC 12707 (KLR) (19 May 2022) (Ruling)**

Neutral citation: [2022] KEELRC 12707 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 633 OF 2015**

**M MBARÚ, J  
MAY 19, 2022**

**BETWEEN**

**JOSHUA MUSYOKA MULI ..... CLAIMANT**

**AND**

**TWIGA COSTRUCTION COMPANY LIMITED ..... RESPONDENT**

**RULING**

1. The claimant filed application dated December 20, 2020 seeking for orders that the dismissal order issued on December 16, 2019 be set aside and the suit be reinstated for hearing on the merits.
2. The application is supported by the affidavit of Namada Simoni advocate and on the grounds that this case was dismissed on December 16, 2019 for non-attendance and when the claimant's advocate came to learn about the dismissal he made the instant application. The matter was scheduled for hearing on December 16, 2019 and due to the unavailability of the advocate he wrote and requested to have another date but this letter was not placed before the judge hearing the matter and the same was dismissed for want of attendance.
3. Namada advocate avers in his affidavit that on December 16, 2019 he had been notified by the advocate for the responded that he had a matter in Makueni law courts and mindful of the clog in the court diary, through letter dated November 22, 2019 he requested to re-fix the matter on a different ate. However the matter was placed in court on December 16, 2019 and dismissed for want of attendance. The claimant has not been able to address due to COVID pandemic and immediately he was able to file this application.

The respondent did not oppose the application.

Determination

4. Though the application by the claimant is not opposed by the respondent, the act of dismissing the suit for non-attendance was at the instance of the court.



5. On September 19, 2019 the claimant's advocate attended and fixed the matter for hearing on December 16, 2019.
6. On October 14, 2019 matter was called over by the deputy registry who confirmed the hearing date on December 16, 2019.

On the due date, December 16, 2019 both parties were absent.

7. The averment that the claimant's advocate wrote to the court seeking to change the hearing date to December 10<sup>th</sup>, 2019 after the date had been allocated and confirmed, such request was not approved. In any event, the averment by counsel for the claimant that his colleague was attending to another matter at Makueni law court is without details. Nothing exists to suggest that such attendance ranked in priority to this court. In any event, the letter seems to suggest that the respondent's advocates and firm of Muatha Mathuva & Co Advocates based in Emali had a matter in Makueni law courts, such law firm as the one attending herein for the respondent cannot have its interests represented by the claimant's advocate. Where such firm had such matter in issue, nothing stopped them from instructing counsel to hold brief and address as appropriate.
8. To take a hearing date and then collude to frustrate the same does not aid justice. The resulting effect is that the non-attendance on the allocated hearing date is without justification.
9. The claimant, as the right-holder in this case is nowhere. As the instructing client, he has no affidavit showing any interest in the matter filed way back in the year 2015.
10. The order dismissing the suit was not addressed expeditiously from December 16, 2019 until December 22, 2020 a period of over a year. Such delay cannot be cured by the averments that there was COVID pandemic.
11. Application dated December 22, 2020 is found without merit and is hereby dismissed. Each party shall bear own costs.

**DELIVERED IN COURT AT NAIROBI THIS 19TH DAY OF MAY, 2022.**

**M. MBARŪ**

**JUDGE**

In the presence of:

Court Assistant: Okodoi

..... and .....

