



**Jeff Oluoch Ngeta v Spire Bank Limited (Cause 1997 of 2017)  
[2022] KEELRC 3858 (KLR) (20 June 2022) (Ruling)**

Neutral citation: [2022] KEELRC 3858 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 1997 OF 2017  
NZIOKI WA MAKAU, J  
JUNE 20, 2022**

**BETWEEN**

**JEFF OLUOCH NGETA ..... CLAIMANT**

**AND**

**SPIRE BANK LIMITED ..... RESPONDENT**

**RULING**

1. The applicant filed a Notice of Motion application seeking to be heard for orders that this honourable court be pleased to discharge and set aside the order made herein on November 16, 2021 dismissing the claimant’s suit for non-attendance and to reinstate the suit for hearing and determination on merit. Further, that the costs of this application be in the cause.
2. The application is based on the grounds that the ELRC registry fixed this matter for hearing before this honourable court on the November 16, 2021 at 1 pm but erroneously sent the hearing notice via e-mail to the firm of Mwagambo Okonjo & Co Advocates instead of the firm of Musungu, Miriti & Naliaka LLP Advocates. That nevertheless having seen the matter on the day’s cause list, the claimant/applicant rushed to the Judge’s Court room at 1.05 pm and was informed that the matter had been called out and an order for dismissal of suit for the claimant’s non-attendance issued by the honourable court. That the orders granted by the court are prejudicial to the claimant as he has been driven away from the seat of justice and denied an opportunity to be heard for being five minutes late for the hearing. That unless the said orders made by this court on November 16, 2021 are discharged, vacated or set aside and the instant suit is reinstated as a matter of urgency, the claimant’s rights of access to justice and fair hearing will be greatly infringed upon. The applicant contends that his suit raises triable issues deserving to be heard and determined on merit and that the case has a high probability of success against the respondent. That the claimant/applicant has in any case zealously prosecuted this matter and has never failed to attend any mention, hearing or mediation session. That on the other hand, the respondent stands to suffer no prejudice if this application is allowed.



3. The application is supported by the affidavit of the claimant/applicant who depones that he had filed a Notice of Change of Advocates dated March 24, 2021 but the registry still sent the hearing notice to his previous advocates. He reiterates the grounds of the application and further avers that he has been condemned unheard and that the inadvertent mistake of his advocates on record, and the Employment and Labour Relations Court registry should not be visited upon him as an innocent litigant.
4. The respondent filed a Replying Affidavit sworn on November 26, 2021 by its advocate, Mr Brian Mbabu who avers that the claimant is undeserving of the order of reinstatement as he has deliberately elected to mislead this honourable court. That the claimant's advocates had actually served them with a hearing notice for a hearing on November 18, 2021 which seemed a clerical error and that on the said November 16, 2021, the claimant's advocates were absent when the court mentioned the matter in the morning. That he courteously called the claimant's advocate at about 9.30am and informed him that the court had mentioned and allocated the matter for hearing in open court at 1.00pm. That the court then called out the matter in court at the scheduled time and neither the claimant nor his advocates were present and therefore the claimant/applicant should not blame the registry for their tardiness. He further avers that a party seeking the remedy of reinstatement of suit ought to approach this court with clean hands but which the applicant has failed to do and is thus not deserved of the discretion of this court.
5. In response, the claimant/applicant filed a Supplementary Affidavit sworn on December 6, 2021 by his advocate Mr Brian Otieno who produces copies of invitation to fix a hearing date and the hearing notice duly served upon the respondent for November 18, 2021. He avers that he was thus shocked when he learnt that the matter had been listed for hearing by the registry on the morning of November 16, 2021 and the hearing date further sent to their client's previous advocates. The claimant submits that his non-appearance at the hearing is neither intentional, deliberate or without an explanation and that this court may indulge the claimant/applicant based on the grounds adduced in the application herein.
6. The claimant/applicant is undeserving of the discretionary power of the court to reinstate his suit for hearing as he deliberately attempted to hoodwink the court. His advocate was notified at 9.00 am of the hearing at 1.00 pm after he failed to appear at the call over of cases in the day's cause list. He made it to court after the time scheduled which means he was aware of the time for hearing but approached the matter with casualness. He then went on to lie about it asserting that he had fixed the case for November 18, 2021. There is no entry or minute from the registry that the case was fixed for November 18, 2021. In addition, there is no requirement that a court has to wait for a set period before dismissing a suit for non-attendance. His assertion that he was only 5 minutes late is of no avail. Non-attendance means there was no one when the case was called. Period. The motion by the claimant being unmerited is dismissed with costs to the respondent.

It is so ordered.

**DATED AND DELIVERED AT NAIROBI THIS 20<sup>TH</sup> DAY OF JUNE 2022**

**Nzioki wa Makau**

**JUDGE**

