



Ganda v Ministry of State for Defence & 2 others (Cause 2476 of 2016) [2022] KEELRC 1753 (KLR) (9 June 2022) (Ruling)

Neutral citation: [2022] KEELRC 1753 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 2476 OF 2016
AN MWAURE, J
JUNE 9, 2022**

BETWEEN

ERICK OLOO GANDA CLAIMANT

AND

MINISTRY OF STATE FOR DEFENCE 1ST RESPONDENT

KURGAT 2ND RESPONDENT

ATTORNEY GENERAL 3RD RESPONDENT

RULING

1. The Claimant has filed an application dated September 30, 2021 praying for setting aside of orders of this honourable Court dated September 22, 2021 and allow the Applicant/Claimant to prosecute his case.

Claimant’s case

2. The matter was coming for Notice to show cause why the suit should not be dismissed for lack of prosecution.
3. The Claimant claims he prepared the response for the Notice to Show cause by his replying affidavit deponed on September 10, 2021. He said however the affidavit could not be filed as the claim had not been registered or approved on the Applicant’s portal.
4. He says that when the matter came up for hearing on September 22, 2021 the Applicant’s advocate had some challenges logging into the Court.
5. He claims when he logged in he was informed by the sitting Judge that the matter had been dismissed. He says he has brought the application without undue delay.



Respondent's Case

6. The Respondent's case is that between November 30, 2016 to 9th January 2020 a period of 3 years lapsed before Claimant took any action to prosecute the suit. That the period then falls outside the prescribed period of one year.
7. The notice to show why claim should not be dismissed for want of prosecution was heard on 22nd September 2022 when Claimant and/or his counsel did not attend Court.
8. The Respondent says his constitutional right to have matters expeditiously concluded is being violated and so prays the notice to show cause dated September 30, 2021 be dismissed with costs.

Decision

9. The Claimant filed the suit dated November 29, 2016 and from when the Court sent the notice to dismiss the suit in 2021 the Claimant had only once written to the Registry on March 9, 2021 for purposes of taking directions. That was many years after filing the suit. The Claimant had been given leave as well by Court on July 5, 2021 to put in a replying affidavit. By the time of hearing the application on September 22, 2021 the replying affidavit had not been filed and the Claimant's advocate was not in Court hence the suit was dismissed.
10. The main issue here for determination is whether the suit should be reinstated and Applicant be granted leave to prosecute his matter.
11. The Claimant claims he was not able to upload his replying affidavit and was late to log in Court as he had some challenges with internet. He says he managed to log in but the suit had already been dismissed and the Court informed him he had to formally apply for reinstatement.
12. That is the only valid argument as he has not shown any justification why the suit has been dead from 2016 to 2021. To his favour however is that he filed his application expeditiously when on September 22, 2021 the suit was dismissed and he filed his application on September 30, 2021.
13. The Court has also considered that the client must not suffer due to the laches or negligence of his advocate. I am also persuaded by Article 50 of the Kenya Constitution 2010 which provides that:

“ Every person has right to have any dispute before a court that can be resolved by application of law decided in a fair and public hearing.”
14. The Court has wide discretion in reinstating dismissed suits. In the instant application considering the Claimant attempted to log in Court on the date of hearing of the Notice to show cause and the speed he used to file the reinstatement application I will grant the Claimant the benefit of doubt and reinstate his suit and so set aside the *ex parte* orders issued on September 22, 2021.
15. The Claimant to pay Kshs.10,000/- costs to the Respondent.

Orders accordingly.

DELIVERED, DATED AND SIGNED IN NAIROBI THIS 9TH DAY OF JUNE, 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 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

