



**Muinde v Libya Oil Kenya Limited (Cause 78 of 2016)
[2022] KEELRC 1589 (KLR) (2 June 2022) (Ruling)**

Neutral citation: [2022] KEELRC 1589 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 78 OF 2016
AN MWAURE, J
JUNE 2, 2022**

BETWEEN

TITUS KIILU MUINDE APPLICANT

AND

LIBYA OIL KENYA LIMITED RESPONDENT

RULING

1. The applicant has by the application dated 8th December 2021 praying for the Court to set aside the order made on 8th December 2021 dismissing the Claimant's claim and reinstate the same for hearing and determination on merit. He also prays that the costs be provided for.

Claimant's case

2. The Claimant avers that the matter was listed for mention on 8th December 2021 and was number one on the cause list. He says that the day in question the Claimant faced internet challenges and was admitted on the platform after the matter had already been dealt with.
3. He further says when he managed to log in, he was informed that the matter had already been dealt with and so he made an application for reinstatement without any undue delay.

Respondent's case

4. He says that on 3rd June 2021 the Court was not sitting and after a few mentions, the matter was fixed for 8th December 2021. He says the Respondent counsel attended Court and the Claimant's advocate remained online and did not request the Court for audience.
5. He says that the Claimant has not met the legal threshold for reinstatement of the suit under Section 33 (1) of Employment and Labour Relations Court (rules) 2016. He prays the court to dismiss the suit.



The Court has critically considered the Claimant's submission dated 28th February 2022 and the Respondent's submissions dated 20th March 2022.

Decision

6. The Court has discretion on whether to reinstate a suit or not. Section 33(1) (d) of the [Employment Act](#) provides that a Court can review a judgment for any other sufficient reason. In the case of [Wanjiku Kamau vs Tabitha Kamau & 3 others](#) 2014 eKLR it was held that

“The Court has the discretion to set aside Judgment or order and there are no limitations and restrictions on the discretion of the Judge except if the judgment or order is raised it must be on the terms that are just.”

7. The law implies that no party should be locked out of the seat of justice unless the party is culpable of evasion or obstruction or delay of justice. In this case the Claimant moved without undue delay to reinstate the case and he gave sufficient reasons why he was not present in Court on the day of hearing. It is fair and just as provided in Article 50 of the Kenya Constitution 2010 to give every person a right to have his dispute resolved in fair and public hearing.
8. In the circumstance, I am persuaded to allow the applicant's application dated 8th December 2021 and order to set side the order made on the same day. The parties are referred to the Deputy Registrar on 18/7/2022 to take an early hearing date.

Orders accordingly.

DELIVERED, DATED AND SIGNED IN NAIROBI THIS 2ND 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

