



**Akomo v Light and Life Broadcasting Station (Cause
36 of 2018) [2022] KEELRC 1478 (KLR) (2 June 2022) (Ruling)**

Neutral citation: [2022] KEELRC 1478 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KERICHO
CAUSE 36 OF 2018
ON MAKAU, J
JUNE 2, 2022**

BETWEEN

JANE AKOMO CLAIMANT

AND

LIGHT AND LIFE BROADCASTING STATION RESPONDENT

RULING

1. This ruling relates to the claimant's notice of motion dated February 7, 2022 seeking the following orders: -
 - a. That the firm of Kioko & Gathoni Advocates be granted leave to come record for claimant in the place of Obondo Kioko & company Advocates.
 - b. That the orders entered on the November 9, 2021 dismissing the suit herein be reviewed, varied and/or set aside.
 - c. That the suit be reinstated for hearing on such terms as the court may deem fit and just.
 - d. That the cost of this application be in the cause.
2. The application is supported by the affidavit sworn on February 7, 2022 by the claimant. In brief the claimant contends that she was not aware that the suit was fixed for mention on November 9, 2021 for notice to show cause since she was not served. She further contended that she was desirous to prosecute her suit but her relationship with her counsel broke down. She did not know that the suit had been dismissed until she instructed a new counsel. She sees no prejudice being occasioned to the respondent if the suit is reinstated and urges that it is in the interest of justice that the suit be reinstated for hearing.
3. The respondent did not oppose the application despite being served twice on February 18, 2022 and May 5, 2022.



4. Having carefully considered the materials presented to the court and the court record itself the following issues arise for determination: -
 - i. Whether leave should be granted to the claimant to change Advocate after judgment.
 - ii. Whether applicant has shown sufficient cause to warrant reinstatement of the suit.

Leave to Change of Advocate

5. Order 9 rule 9 of the *Civil Procedure Rules* requires that a party must first obtain leave of the Court before changing advocates if the court has entered final judgment in the suit. In this case the court entered judgment in favour of the respondent by dismissing the suit for want of prosecution. Claimant contends that her relationship with the former counsel has broken down. Having considered the circumstances of this case I see no good reason to deny the claimant leave to change advocate.

Review and setting aside dismissal order

6. The relevant law herein is order 51 rule 15 of the *Civil Procedure Rules* provides that:

“Where under this order judgment has been entered or the suit has been dismissed, the court, on application, may set aside or vary the judgment or order upon such terms as to costs.”
7. Rule 33 (1) of the *Employment and Labour Relations Court procedure rules* sets out grounds for review of court orders including any sufficient reason. However, the applicant must make the application promptly.
8. The impugned order dismissing the suit was made on November 9, 2021 and the application for reinstatement was made on February 7, 2022. The period taken to make the application was about three months. The claimant states that she learned about the dismissal after hiring the new counsel. Although she did not state the exact date when she learned about the dismissal, I find in the circumstances of the case that a delay of three months is not unreasonable.
9. In addition to the issue of the time taken to make the application, the applicant must demonstrate sufficient ground for reinstating of the suit. The applicant must prove that he was prevented from attending court on the hearing date by a good cause.
10. In *Shah v Mbogo and another* [1967] EA 116 the Court of Appeal of East Africa held that: -

“This discretion (to set aside decisions) is intended so to be exercised to avoid injustice or hardship resulting from accident, inadvertence, or excusable mistake or error, but is not designed to assist a person who has deliberately sought, whether by evasion or otherwise, to obstruct or delay the course of justice.” (Emphasis added)
11. In this case the claimant explained that she was not served with a notice to show cause and therefore she was not aware that the suit was listed for the purpose of dismissal for want of prosecution on November 9, 2021.
12. The respondent, has, not rebutted the contention by the claimant and indeed the record shows that although there is a notice issued by the deputy registrar of the court, for service by the court bailiff, there is no corresponding affidavit of service filed. Therefore, I find and hold that the applicant has established sufficient ground to warrant the review and setting aside of the order dismissing the suit on November 9, 2021.



13. In the end allow the application as prayed but with no order as to costs.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 2ND DAY OF JUNE, 2022.

ONESMUS N MAKAU

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 April 2020, this ruling has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

ONESMUS N. MAKAU

JUDGE

