



**Muriithi v Kenya Hospital Association t/a the Nairobi Hospital (Cause 484 of 2015) [2022] KEELRC 1289 (KLR) (14 July 2022) (Ruling)**

Neutral citation: [2022] KEELRC 1289 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 484 OF 2015**

**K OCHARO, J  
JULY 14, 2022**

**BETWEEN**

**PURITY MURIITHI ..... CLAIMANT**

**AND**

**KENYA HOSPITAL ASSOCIATION T/A THE NAIROBI  
HOSPITAL ..... RESPONDENT**

**RULING**

1. By her memorandum of claim dated the March 20, 2015, the Claimant/Respondent impleaded the Respondent/Applicant seeking for a couple of reliefs that were put forth in its reliefs section.
2. Upon being served with summons to enter appearance, the Respondent/Applicant did, and filed a memorandum in reply and counter-claim on the May 27, 2015. At the close of pleadings as there was a joinder of issues. The matter became ripe for hearing on merit.
3. From the date of filing of the last pleading on record, the May 27, 2015, the Claimant did not take any step towards having the matter set down for hearing till that time her Counsel visited the registry and picked a hearing date for the July 9, 2018.
4. On the July 9, 2018, the matter was taken out of that day’s cause list with directions that the same be mentioned on the November 5, 2018 for pre-trial directions. The matter was placed before Justice Radido, he directed the parties to file a list of agreed issues by the November 30, 2018 with a further direction that a hearing date be picked in the registry.
5. When the matter came up before Justice Radido on the March 29, 2019, the parties were not in attendance of court, the court got prompted to remove the same from the cause list, but set it down for Notice to show cause why it should not be dismissed for the April 1, 2019. On the April 1, 2019, the parties were again not present, therefore no cause was shown. The Court dismissed the matter.



## **The Respondent's Application**

6. Through a Notice of Motion Application dated May 25, 2021, by the Respondent/Applicant, it was sought:
  1. The Claimant's claim dated March 20, 2015 and filed on March 30, 2015 be dismissed for want of prosecution.
  2. The Claimant bears the costs of this Application and the entire suit on a full indemnity basis.The Application is anchored on the grounds obtained on the face of the Application, and the affidavit sworn on the 25<sup>th</sup> May 2021 by one Maxwell Maina.
7. When the Application came up for hearing on the April 21, 2019 Counsel Thuku for the Claimant sought for time to respond to the Application, as at that time the Claimant/Respondent had not filed any. The court granted the Claimant/Respondent 10 days to file and serve the response.
8. The court further gave the following directions:
  - a. That the Respondent/Applicant to file and serve their written submissions on the Application within 14 days of service of the response.
  - b. That the Claimant/Respondent to file response submissions within 14 days of service of the Respondent's/Applicant's submissions.
9. The Claimant/Respondent neither filed the response nor the response submissions.

## **Determination**

10. Having noted that the case herein was dismissed on the April 1, 2019, the filing of the instant Application was devoid of any foundation. It was unnecessary. It should be allowed to collapse.
11. Consequently, the Respondent's/Applicant's Notice of Motion Application dated May 25, 2021 is hereby struck out. The file is marked as closed.

**READ, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 14<sup>TH</sup> DAY OF JULY 2022.**

**OCHARO KEBIRA**

**JUDGE**

**In presence of**

Mr. Kaguta for the Respondent/Applicant.

No appearance for the Claimant.

**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 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> 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.

**OCHARO KEBIRA**

**JUDGE**

