



**Shilesi v Mjengo Supermart Limited (Cause 27 of 2018)
[2022] KEELRC 1550 (KLR) (8 August 2022) (Ruling)**

Neutral citation: [2022] KEELRC 1550 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
CAUSE 27 OF 2018
S RADIDO, J
AUGUST 8, 2022**

BETWEEN

PATRICK IKALA SHILESI CLAIMANT

AND

MJENGO SUPERMART LIMITED RESPONDENT

RULING

1. On 11 November 2020, the Court dismissed an application dated 5 February 2020, which had been filed by the Respondent seeking the dismissal of the Cause.
2. The Respondent was aggrieved, and on 3 March 2022, it filed a Motion seeking orders:
 - (1) That this Honourable Court be pleased to set aside the ex-parte orders given by the Court on 11th November 2021, ex debito justitiae, together with all consequential proceedings thereon, and the Respondent be granted unconditional leave to prosecute the Notice of Motion application dated 5th February 2020 on merit.
 - (2) The costs of this application be borne by the Claimant.
3. The main ground advanced by the Respondent in support of the Motion was that when the Court dismissed the application dated 5 February 2020 on 11 November 2020, it had not yet been filed (it was asserted that the Motion had only been filed on 26 February 2021).
4. The Claimant filed a replying affidavit in opposition to the Motion on 30 March 2022, wherein it was deposed that the dismissed application had not been served upon him; that the Respondent had written to the Deputy Registrar on 11 June 2020 seeking that the application dated 5 February 2020 be set for directions before the Court, and therefore it was strange how the instant application found its way into the Court file.



5. The Court directed the parties on 22 March 2022 to file and exchange submissions. The submissions were not on file by the agreed timelines.
6. The Court has considered the Motion, affidavits, and record.
7. The copy of the Motion dated 5 February 2020, currently in the file, has a Court stamp of 26 February 2021.
8. The Respondent wrote to the Deputy Registrar with a copy to the Claimant on 11 June 2020, seeking that the application dated 5 February 2020 be placed before the Court to give directions.
9. It is indeed strange that the Respondent was writing to the Deputy Registrar on 11 June 2020 concerning an application it is now alleging was not in the Court file when it was dismissed (it alleges it filed the Motion in Court on 26 February 2021).
10. It is even stranger to note that the Claimant requested the Respondent for a copy of the application through a letter dated 23 November 2020, requesting to be served with the application.
11. Based on the Respondent's letter dated 11 June 2020 to the Deputy Registrar and copied to the Claimant, the contention that the Court dismissed an application which had not been filed is stranger than fiction.
12. The (an) application must have been on file, and it is more than probable that some unknown person interfered with the file by removing the Motion.
13. In the circumstances, the Court finds no merit in the application dated 2 March 2022, and it is dismissed with costs in the cause.

DELIVERED THROUGH MICROSOFT TEAMS, DATED AND SIGNED IN KISUMU ON THIS 8TH DAY OF JUNE 2022.

RADIDO STEPHEN, MCIARB

JUDGE

Appearances

For Claimant Ben Aduol Nyanga & Co. Advocates

For Respondent Otieno Ragot & Co. Advocates

Court Assistant Chrispo Aura

