



**Mollet v Jamii Bora Telecommunications Limited (Cause 917 of 2015)  
[2022] KEELRC 12711 (KLR) (29 September 2022) (Ruling)**

Neutral citation: [2022] KEELRC 12711 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 917 OF 2015  
M MBARŪ, J  
SEPTEMBER 29, 2022**

**BETWEEN**

**DAVID MEPUKORI OLE MOLLEL ..... CLAIMANT**

**AND**

**JAMII BORA TELECOMMUNICATIONS LIMITED ..... RESPONDENT**

**RULING**

1. The claimant filed application dated March 22, 2022 seeking for orders that the orders issued on November 4, 2021 dismissing the suit for non-attendance of the claimant and his advocate be set aside, discharged or be reviewed.
2. The application is supported by the affidavit of Muriithi Wairimu and the claimant and on the grounds that before November 4, 2021 the matter had been listed before Justice Nduma but when the claimant attended court virtually on the scheduled hearing they obtained notice to the effect that the Judge was on leave without an indication that the matter had been placed before another court. The claimant believed that the matter would be heard after the judge resumed duty only to learn the matter had been called and dismissed for want of attendance.
3. There was an honest mistake which should not be punished with an order of dismissal of suit and the same should be reinstated and parties heard on the merits.
4. In reply, the respondent filed the replying affidavit of Olive Rotich the senior legal officer who avers that on November 4, 2021 the claimant failed to attend court for no good cause and the matter was dismissed for want of attendance. The cause list had been posted online and the record show the file was before this court and there was no attendance which justified dismissal of suit.
5. Rotich also avers that from November 4, 2021 the claimant did nothing until March 22, 2022 when he filed the instant application with delay which cannot be explained and should not be allowed to punish



the respondent over a matter which has since been dismissed for non-attendance and the application should be dismissed with costs.

6. Both parties attended court and made oral submissions.

#### **Determination.**

7. On July 12, 2021 both parties attended court and the Presiding Judge allocated a hearing dated on November 4, 2021 and directed that the matter be heard by any Judge. The claimant was awarded costs. The respondent was also directed to pay court adjournment fees.
8. Both parties were present in court on July 12, 2021 the claimant represented by Mureithi Advocate and the respondent represented by Museve Advocate.
9. In the Supporting Affidavit of Mureithi advocate dated March 22, 2022 she well notes at paragraph 2 that there was court attendance on July 12, 2021 when the matter was adjourned and a hearing date allocated. The fact of the court directing that the matter be heard before any judge is not addressed.
10. Under rule 22(1) (c) of the *Employment and Labour Relations Court (Procedure) Rules, 2016* the court is allowed to dismiss a suit for non-attendance
  22. (1) where a hearing notice was served on the parties and an affidavit of service has been filed, the court may proceed with the case before it in the absence of any party thereto if—
    - (a) The party has indicated that it does not wish to attend the hearing;
    - (b) The party fails to appear for the hearing without providing any reasons; or
    - (c) The court is not satisfied with the reasons forwarded to it by that party for non-attendance.
11. Non-attendance in court on a date allocated by the court in the presence of both parties without any good cause is not justified. The reason for not attending being that the Presiding Judge was on leave whereas he had already directed the matter be heard by any other judge compounds the fact that the non-attendance is not justified.
12. The above put into account, this being a 2015 matter, the court shall reinstate the suit with conditions. That;
  - a. The suit is hereby reinstated and orders of November 4, 2021 vacated;
  - b. The claimant is given 14 days to set the matter down for hearing failure to which the suit shall stand dismissed with costs to the respondent at the lapse of such time;
  - c. The claimant shall pay the respondent costs of ksh 20,000 within 14 days;
  - d. Costs of the application awarded to the respondent.

Orders accordingly.

**DELIVERED IN OPEN COURT AT NAIROBI THIS 29<sup>TH</sup> DAY OF SEPTEMBER, 2022.**

**M. MBARŪ**

**JUDGE**

In the presence of:

Court Assistant Okodoi



..... and .....

