



**Olare v Tononoka Rolling Mills Limited (Cause 1573 of 2016)  
[2022] KEELRC 12714 (KLR) (29 September 2022) (Ruling)**

Neutral citation: [2022] KEELRC 12714 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 1573 OF 2016  
M MBARÚ, J  
SEPTEMBER 29, 2022**

**BETWEEN**

**WYCLIFFE OLARE ..... CLAIMANT**

**AND**

**TONONOKA ROLLING MILLS LIMITED ..... RESPONDENT**

**RULING**

1. The claimant filed application dated March 10, 2022 seeking for orders that the court order of March 8, 2022 dismissing the suit be set aside and the suit be reinstated. The application is made on the grounds that on February 7, 2022 parties attended court to confirm if consent had been recorded and to take directions which consent had not been achieved and hence ready for hearing. Parties were directed to take a hearing date at the registry but despite writing to the Deputy Registrar for a hearing date, none was allocated.
2. The application is supported by the affidavit of M M Karigi Advocate for the claimant and who avers that on February 7, 2022 he wrote to the court seeking for a hearing date but he checked on the e-filing platform discovered that the matter had been listed for a notice to show cause why the suit should not be dismissed on March 8, 2022 which was erroneous since the parties were ready to take a hearing date. When the matter came up in court, it was dismissed.
3. The notice to show cause had not been served upon the claimant to allow him to defend his claim which has merits and should be allowed to proceed for hearing.

The respondent did not oppose the application.

**Determination**

4. This ruling has become necessary despite the respondent not being opposed to the application seeking reinstatement of suit following its dismissal on March 8, 2022 on the reasons that;



5. The suit was filed on August 9, 2016 and a response filed on September 2, 2016.
6. Parties attended before the Deputy Registrar on July 24, 2018 for taking hearing directions and a hearing date allocated for November 27, 2018 when the matter was taken out on the grounds parties were negotiating a settlement.
7. On November 2, 2020 the court allocated the parties a date in court for December 4, 2020 but there was no attendance.
8. On July 23, 2021 the claimant attended before the Deputy Registrar and was allocated a hearing date for October 5, 2021 and when the parties attended they indicated to the court that they were negotiating a settlement and a mention date was allocated for December 9, 2021 and on the due date the file was placed before the Deputy Registrar and the claimant's advocate indicated that a consent would be filed and a mention date was allocated to confirm the same on February 7, 2022.
9. On February 7, 2022 both parties attended court and indicated that no settlement had been achieved since a single item had not been agreed upon.

Based on the above, on February 7, 2022 the court directed that;

Take a hearing date at the registry or file consent once achieved. If no hearing date is secured within 30 days or consent filed, attend on March 8, 2022 to show cause why suit should not be dismissed.

On the record there is no hearing date allocated.

There is no consent filed on the negotiations for settlement.

10. Hence, contrary to the averments by advocate for the claimant in his supporting affidavit dated March 10, 2022 that on February 7, 2022 he applied to have a hearing date which was not allocated is not correct since the Deputy Registrar allocated the same and further that the claimant was not issued with a notice to show cause why his suit should not be dismissed is not correct as both parties were in court on February 7, 2022 and in their presence such directions issued as outlined above.
11. The claimant, well represented by his advocate was at all material times aware that on various dates there were representations in court that a settlement was being negotiated and hence the matter adjourned since the year 2016. Despite being allocated several hearing dates, the matter has not taken off for the single reason there were negotiations and on February 7, 2022 the court recognising the need to allow parties to continue and resolve the matter out of court allowed for 30 days failure to which to take a hearing date at the registry or attend court on March 8, to show cause why the suit should not be dismissed. On this date, no good cause was demonstrated as to why this suit should not be dismissed.
12. Further, there is no affidavit by the claimant as the right-holder that there is interest in this matter. Such interest cannot be at the instance of his advocates.
13. The court finds no good cause to maintain the matter on the face of the age which is compounded by failure to abide directions issued on February 7, 2022.
14. Accordingly, application dated March 10, 2022 is found without merit, it is in abuse of court process and is hereby dismissed. Each party shall bear own costs.

**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** .....

