



REPUBLIC OF KENYA



**KENYA LAW**  
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**Gakui v KCA University (Cause 1281 of 2017)  
[2022] KEELRC 14653 (KLR) (27 October 2022) (Ruling)**

Neutral citation: [2022] KEELRC 14653 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 1281 OF 2017  
M MBARÚ, J  
OCTOBER 27, 2022**

**BETWEEN**

**ASSA MUNENE GAKUI ..... CLAIMANT**

**AND**

**KCA UNIVERSITY ..... RESPONDENT**

**RULING**

1. The claimant filed application dated July 22, 2022 seeking for orders that the court do set aside the order of dismissal of the suit for non-attendance upon terms which are just.
2. The application is supported by the affidavit of Dennis Kimakia advocate for the claimant and on the grounds that the claimant has consistently followed up on the matter to secure a hearing date and on June 28, 2022 was requested to log into the online session with a view to take dates but was informed that this file was not available.
3. On July 18, 2022 the claimant mapped the matter and only then noted that the file was marked as closed on the grounds that on July 14, 2022 the matter came up in court and was dismissed for non-attendance on a date allocated on December 22, 2021 when only the respondent was present and was directed to serve the claimant but this was not done. The claimant has consistently followed up on his case and will be denied justice if the suit is not reinstated.
4. In reply, the respondent filed the Replying affidavit of Allan Muga advocate who avers that the claimant has failed to show a sufficient cause to justify the setting aside of the order of dismissal of the suit for non-attendance as directed by the court. The claimant has not acted in a diligent manner but has been negligent and failed to attend court and the dismissal of the suit was justified. The grounds made in support of the application for reinstatement of the suit do not demonstrate why the claimant left the matter inactive for since the year 2017 and the application should be dismissed with costs.



**Determination**

5. On the record, the claimant filed the instant suit on July 6, 2017 and a response filed on June 6, 2019.
6. The matter remained inactive until June 20, 2019 when the court directed parties to take a hearing date at the registry.
7. No action was taken until December 22, 2021 when the respondent moved the court and requested for a hearing date which was allocated for February 14, 2022 and was directed to serve the claimant.
8. On the due date, the claimant was absent and the suit was dismissed for want of attendance save the claimant asserts that the hearing date was never served.
9. The respondent submitted that there was service upon the claimant but later learnt that the claimant had changed the email address used to effect service without the knowledge of the respondent. There was no diligence on the part of the claimant to ensure that the changes made were brought to the attention of the respondent and the instant application should be dismissed.
10. The duty to issue notice upon change of pleadings and particularly address is upon the party who alleges to rely on such matter. The claimant’s advocates changed the email address used while filing pleadings without notice to the respondent and when the hearing date was allocated, such changed addressed was used to effect service.
11. Indeed the respondent should not be punished for using the given address to effect service. however to ensure that each party is heard on the merits, the court shall allow a conditional reinstatement of the suit taking into account the same was filed in the year 2017 and the claimant has largely been inactive forcing the respondent to attend court to secure a hearing date.
12. Application dated July 22, 2022 is hereby allowed on conditions that;
  - a. The claimant shall secure a hearing date within the next 30 days and failure to which the suit shall stand dismissed with costs to the respondent; and
  - b. The claimant shall pay the respondent costs of ksh 15, 000 before (a) above.

Orders accordingly.

**DELIVERED IN COURT AT NAIROBI THIS 27<sup>TH</sup> DAY OF OCTOBER, 2022.**

**M MBARŪ JUDGE**

**In the presence of:**

**Court assistant: Okodoi**

..... **and** .....

