



REPUBLIC OF KENYA



KENYA LAW
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**Nyanchoka v Rana Body Shop Limited (Cause 2007 of 2015)
[2022] KEELRC 14665 (KLR) (27 October 2022) (Ruling)**

Neutral citation: [2022] KEELRC 14665 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 2007 OF 2015
M MBARŪ, J
OCTOBER 27, 2022**

BETWEEN

KENNEDY NYABOGA NYANCHOKA CLAIMANT

AND

RANA BODY SHOP LIMITED RESPONDENT

RULING

1. The claimant filed application dated September 28, 2021 seeking for orders that the court be pleased to review and set aside the dismissal order issue don September 21, 2021 and extend time to comply with the orders issued on April 29, 2021.
2. The application is supported by the affidavit of Wilfred Orege Stephen and on the grounds that the court on April 29, 2021 issued orders that the matter be fixed for hearing on or before May 31, 2021 and on May 3, 2021 the claimant filed application for amendment which was fixed for hearing on May 13, 2021 but when the matter came up for mention, counsel logged into the wrong court and upon realisation of such mistake the matter had already been called and dismissed.
3. The claimant has made efforts to have the matter fixed for hearing and was allocated September 21, 2021 but the court directed that the suit had been dismissed for lack of compliance with the directions issue don April 29, 2021 and hence pray that such order be reviewed and time be extended to allow the claimant be heard on the merits.
4. In reply, the respondent filed the replying affidavit of Pritam Singh Pannu the managing director and who avers that the claimant is misleading the court since this suit was filed way back in the year 2015 and he has failed to prosecute the same and the claim is on the basis that he had just come across a CBA as the basis of his claim. The respondent replied to the claim on February 24, 2016 and cannot continue to retain advocates to defend a matter which the claimant has no interest in and this is prejudicial and should be dismissed with costs.



5. Pannu also avers that the matter was concluded on September 21, 2021 when the claimant's advocate failed to attend court and as a result the suit was dismissed for good cause and on account of the claimant's non-attendance with regard to court orders of April 29, 2021 in failing to set down the matter for hearing within the prescribed time.
6. The orders of April 29, 2021 are self-executing and the claimant ought to have been keen to comply. The claimant was at all material times aware that this suit was before court No 2 and had no reason to log into any other court and failure to attend should not be at the prejudice of the respondent who continues to retain advocates to defend this matter at great costs.
7. The respondent filed written submissions.

Determination

8. On the record, this matter was filed in the year 2015.
9. On January 30, 2018 parties attended court and indicated they were negotiating and allocated March 1, 2018 on which date no settlement had been achieved.
10. There was inaction until April 29, 2021 when both parties attended court for hearing but the claimant's advocate asked for adjournment on the grounds that the claimant was unable to travel to attend court despite the proceedings being virtual. The claimant also applied for leave to amend pleadings.
11. The court allowed the adjournments at the instance of the claimant noting that this is a 2015 matter and on conditions that pleadings be amended pursuant to the provisions rule 14 of the *Employment and Labour Relations Court (Procedure) Rules, 2016* and that where no action is taken the suit shall stand dismissed as of May 31, 2021.
12. On April 29, 2021 the claimant filed application under certificate of urgency and the court directed that the same be placed before court No 2 for mention and directions on May 13, 2021.
13. With this action, the claimant had complied with the directions of April 29, 2021 by taking action before the May 31, 2021.
14. On May 13, 2021 the claimant was directed to take a hearing date with regard to the notice of motion dated April 29, 2021 at the registry and on May 24, 2021 was allocated September 21, 2021.
15. On the due date on September 21, 2021 the parties made submissions and going back to the directions of April 29, 2021 the court noted the claimant had not secured a hearing date, save the intervention on April 29, 2021 of filing an application is hereby noted as justified as correct and consistent with the directions of the court and the dismissal of the suit not justified.
16. For this reasons, the suit is hereby reinstated save the claimant shall not be left at large. It is noteworthy that the instant application is supported by counsel for the claimant and not the right-holder the claimant the presence of the claimant herein to secure his rights has been wanting since the year 2015. Suit is hereby reinstated on condition that any inaction exceeding 30 days will lead to instant dismissal of the suit without further recourse to this court as of December 1, 2022. the application seeking for extension of time so as to comply with the orders of April 29, 2021 is therefore dealt save the respondent has stood by waiting for the claimant to move the court since the year 2015 and the claimant shall meet the respondents costs of this application at Ksh 10, 000 to be paid within 30 days failure to which total costs dues herein shall be taxed per the applicable scales.
17. Accordingly, application dated September 28, 2021 is allowed subject to the following conditions;



1. The suit is hereby reinstated;
2. claimant has the next 30 days to take action failure to which the suit shall stand dismissed as of December 1, 2022 with costs to the respondent; and
3. The claimant shall pay the respondent costs of Ksh 10, 000 within 30 days failure to which the due costs shall be taxed.

DELIVERED IN COURT AT NAIROBI THIS 27TH DAY OF OCTOBER, 2022.

M. MBARŪ JUDGE

In the presence of:

Court Assistant: Okodoi

..... and

