



**Mbugua v CMC Motors Group Limited & another (Cause 2307 of 2017)
[2022] KEELRC 14655 (KLR) (27 October 2022) (Ruling)**

Neutral citation: [2022] KEELRC 14655 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 2307 OF 2017
M MBARŪ, J
OCTOBER 27, 2022**

BETWEEN

GEORGE NGATIRI MBUGUA CLAIMANT

AND

CMC MOTORS GROUP LIMITED 1ST RESPONDENT

CMC HOLDINGS LIMITED 2ND RESPONDENT

RULING

1. The claimant filed application dated June 8, 2022 seeking for orders that the orders issued on May 30, 2022 dismissing the suit be set aside the same be reinstated for hearing and determination.
2. The application is supported by the affidavit of Jennifer Wachira advocate and on the grounds that when the matter came up for mention on May 30, 2022 for pre-trial directions as directed at the registry, it was instead listed as a hearing and when the matter was called out the network was poor the counsel was removed from the platform. When the counsel was able to log back the court session had ended and noted that several other parties had been affected and referred to the registry but only learnt that the suit had been dismissed on a date set for mention and pre-trial directions.
3. Ms Wachira avers that it is only fair that the claimant be given a chance for hearing of the case on the merits.
4. The respondent opposed the application and filed the replying affidavit of Kefa Ombati advocate and who avers that the matter was scheduled for hearing on April 25, 2022 after the date had been taken by consent on March 10, 2022.
5. On April 24, 2022 counsel received text from Wachira advocate indicating that she shall not be able to proceed with the hearing on April 25, 2022 because her child was unwell and that she shall send someone to hold brief and seek adjournment.



6. On April 24, 2022 counsel called Wachira advocate and informed her that the matter was ready for hearing and Ms Kamunge held brief and an adjournment was granted on condition that the claimant should attend at the registry and obtain another date within 30 days failure to which suit would stand dismissed on May 30, 2022.
7. There was no action therefrom until the instant application was filed after suit lapsed on May 30, 2022.
8. On the application and the affidavits, the record is that this suit was filed on November 27, 2017.
9. On March 10, 2022 parties attended for pre-trial directions and the court allocated a hearing date for April 25, 2022 and further allowed pleadings to close within 21 days.
10. On the scheduled hearing date, April 25, 2022 both parties attended and the claimant sought adjournment on the grounds of indisposition and the court allowed the same on condition that the claimant moves the court within and failure to which the suit would stand dismissed as of May 30, 2022.
11. On the record, the next action was on May 30, 2022 and both parties were absent. The suit stood dismissed as of May 30, 2022.
12. The claimant's case is that on May 30, 2022 she made effort to log into the virtual session but failed.
13. As much as the court takes notice that there are technological challenges with regard to access to virtual court sessions, the scheduled date of May 30, 2022 was at the instance of the court and not the claimant. The claimant ought to have taken action to set the matter down for hearing on or before such date. The allocated date was just to confirm the action taken and failure to which, the suit stood dismissed.
14. In the entirety of the supporting affidavit of Ms Wachira, there is nothing to demonstrate the efforts taken from April 25, 2022 to May 30, 2022 which time in any event is more than the 30 days allocated to take action. Such time came and no action was taken.
15. The respondent in reply has gone to great length to articulate the issues at hand. Ms Wachira advocate for the claimant called and indicated that there was a sick child. This led to the initial adjournment and he was able to accommodate fellow counsel.
16. Taking into account the inaction on the part of the claimant, the nonattendance for the 30 days allocated on April 25, 2022 the court taking technological challenges posed, the suit is hereby reinstated on condition the claimant meets the respondent's costs for attendance assessed at ksh 20, 000 and to be paid within 30 days and within which time the claimant shall attend and fix this matter for hearing.
17. Failure to abide as directed, the suit shall stand dismissed at the lapse of 30 days from the date hereof with costs to the respondent. Application dated June 8, 2022 is allowed. Pay respondent ksh 20, 000 within 30 days.

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

M. MBARŪ JUDGE

In the presence of:

Court Assistant: Okodoi

..... and

