



**Mwaki v Harley’s Limited (Cause 3 of 2017)
[2022] KEELRC 14658 (KLR) (27 October 2022) (Ruling)**

Neutral citation: [2022] KEELRC 14658 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 3 OF 2017
M MBARŪ, J
OCTOBER 27, 2022**

BETWEEN

EDGAR MWAKI CLAIMANT

AND

HARLEY’S LIMITED RESPONDENT

RULING

1. The claimant filed application dated May 26, 2022 seeking that orders issued on May 26, 2022 dismissing the suit for non-attendance be set aside and the suit be reinstated.
2. The application is supported by the affidavit of Jane Kemunto Masengo and on the grounds that on May 26, 2022 the claimant was in court for hearing but when the matter was called, the camera was working but the audio refused to work and the matter was dismissed for non-attendance when in fact the claimant was in court.
3. In the supporting affidavit, counsel for the claimant avers that the incident of the camera working but the audio not working was embarrassing but unfortunate and this should not be used to deny the claimant justice.
4. In reply, the respondent filed the replying affidavit of Alpha Gakunga Advocate and who avers that the application by the claimant is without merit and should be dismissed. the suit was filed in the year 2017 and both advocates attended on May 10, 2022 and a hearing date was allocated by consent but on the due date he claimant or the advocate were not in court and when the matter was called none responded and the court proceeded on good cause to dismiss the suit for non- attendance.
5. The instant application is filed as an afterthought and should be dismissed with costs.



Determination

- 6. The claimant is seeking the reinstatement of the suit following dismissal for non- attendance on May 26, 2022. The claimant asserts that on the scheduled hearing date which had been allocated by consent, he logged into the online session with the video on but the audio failed to function a fact which was noted by the respondent’s advocate but the court did not appreciate. However, there is no affidavit by the claimant or the respondent’s counsel in support of the assertions by the claimant.
- 7. Attendance in court whether on the online/virtual platform or open court is not the mere attendance but a party must address the court when called and at the time the scheduled matter is up for mention, hearing or as the case may warrant. A virtual attendance on camera and without addressing the court is not court attendance.
- 8. Non-attendance in court on a date allocated by consent leads to one direction. A dismissal of the suit for want of attendance.
A suit once dismissed can be reinstated for good cause.
- 9. The claimant filed this claim in the year 2017 and to date the same has not been prosecuted.
- 10. The matter remained idle until July 15, 2021 when the claimant’s advocate submitted that there were no instructions from the client. Another date was allocated for 2021 but the claimant was not audible to the court and again the same issue arose on November 8, 2021.
- 11. Eventually a hearing date was allocated by consent for May 26, 2022 when the claimant was absent.
- 12. The history above does not reflect well on the claimant in this matter. The issue of network failing, not being audible, only appearing on camera and no audio, such put into account, the court shall allow the claimant one more chance to address the network challenges and take another hearing date.
- 13. Application dated May 26, 2022 is hereby allowed and suit reinstated on the following conditions;
 - a. The claimant shall take a hearing date at the registry within 30 days and failure to which the suit shall stand dismissed at the lapse of such time with costs to the respondent;
 - b. The claimant shall pay the respondent costs of Ksh 15, 000 before (a) above.

Orders accordingly.

Delivered in court at Nairobi this 27th day of October, 2022.

M. MBARŪ JUDGE

In the presence of:

Court Assistant: Okodoi

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