



**Owiyo v Repelectric (K) Ltd (Cause 2400 of 2017)
[2022] KEELRC 12958 (KLR) (24 October 2022) (Ruling)**

Neutral citation: [2022] KEELRC 12958 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 2400 OF 2017
AN MWAURE, J
OCTOBER 24, 2022**

BETWEEN

JOHNA OCHIENG OWIYO CLAIMANT

AND

REPELECTRIC (K) LTD RESPONDENT

RULING

Claimants Application

1. The claimant’s prayer via his notice of motion dated November 19, 2021 is for reinstatement of the suit and to be heard on merits. He avers that the he will rely on his affidavit deponed hereto.
2. He claims that he is zealous to prosecute his claim and that he was not able to fix a date due to the closures of the courts as a result of Covid 19 pandemic. He further says the matter was to be herd on November 1, 2021 but on that date they had a system breakdown and so the case was dismissed since there was non appearance.
3. He says he would wish to exercise his right to be heard expeditiously and on merit.
4. In his supporting affidavit dated October 11, 2021 he says he had invited his other colleague representing the respondents to meet in order to fix a mention date on October 21, 2021 but was asked to wait for court directions. He was then issued with the dismissal notice.

Respondent’s Response

5. The respondent through his Director Rachel K Whotton deponed as per her replying affidavit dated March 3, 2022 and said that since the pretrial on July 12, 2018 the claimant took no steps to set down the matter for hearing. She further say that since the matter was dismissed on November 1, 2021 the claimant only filed the application for reinstatement on November 19, 2021 and served it on February 3, 2022 via email.



6. The respondent says that it is not true that the claimant could not fix the case because of Covid 19 pandemic. Furthermore she says she does not have the email the claimant is alleging to have written dated October 14, 2021. She says that the Microsoft platform on November 1, 2021 worked for them and all the others who were present on the platform that date.
7. She says the claimant has no justifiable reason to have the suit reinstated and his application should be dismissed with costs to the respondent.

Decision

8. This case was filed on December 4, 2017. The respondent filed his reply on February 9, 2018. The pretrial process was apparently held on July 12, 2018 and matter was confirmed ready for hearing. The claimant was definitely slothful in setting down the matter for hearing for all those years. The respondent should also have been diligent to apply for the case to be dismissed for lack of prosecution. Clearly all the parties are guilty of laches.
9. Having observed the same it is the courts view that the *Constitution* of Kenya 2010 clearly provides that justice should be demystified and should be accessible to all parties without undue technicalities. Article 50 of the *Constitution* of Kenya provides that all are entitled to a fair hearing and article 159(d) provide that justice shall be administered without undue technicalities.
10. In the above matter the case was dismissed for want of prosecution on November 1, 2021. The application to reinstate the same was filed on November 19, 2021. The same was therefore filed without undue delay. The court at least holds the speed the application to reinstate the suit shows an awakening on the claimant part.
11. The court has wide discretion to reinstate a suit that has been dismissed *ex parte* for lack of prosecution. All parties deserve to be given an opportunity to be heard. In the case of *Wachira Karanu vs Bildad Wachira Civil Suit No 101 of 2021 eKLR* the court observed that it exists to serve substantive justice for the parties in the dispute before it. Both parties deserve justice and is their legitimate expectation that they should each be allowed a proper opportunity to advance their respective cases upon merits of the matter. This is the fundamental principal of natural justice.
12. The court should consider why the defence was not filed and/ or why the party did not appear for hearing and also at the same time consider if there are triable issues raised or likely to be raised in the defence. While considering if to reinstate a suit the court looks into avoiding injustice resulting from accident or inadvertence or excusable mistake but not to assist a party set to abstract or delay the course of justice see *Shah vs Mbogo & Another 1967 eKLR*.
13. The court will in keeping with the constitutional mandate to avail access of justice to all give the claimant a second chance to prosecute its case expeditiously. The claimant suit is therefore reinstated. He is however ordered to pay Kshs 10,000 being costs to the respondent within 30 days and before the case is fixed for hearing failure of which the reinstatement order will lapse.
14. The deputy registrar is also directed to allocate this matter a date for hearing once costs are paid on priority basis.

Orders accordingly.

DELIVERED, DATED AND SIGNED IN NAIROBI THIS 24TH OCTOBER, 2022.

ANNA NGIBUINI MWAURE

JUDGE



ORDER

In view of the declaration of measures restricting court operations due to the Covid-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on March 15, 2020 and subsequent directions of April 21, 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with order 21 rule 1 of the [Civil Procedure Rules](#), which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court had been guided by article 159(2)(d) of the [Constitution](#) which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under article 48 of the [Constitution](#) and the provisions of section 1B of the [Civil Procedure Act](#) (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

ANNA NGIBUINI MWAURE

JUDGE

