



**Thungu v Dhl Exel Supply Chain (K) Limited (Cause 1352 of 2014)
[2022] KEELRC 12807 (KLR) (6 October 2022) (Ruling)**

Neutral citation: [2022] KEELRC 12807 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1352 OF 2014
L NDOLO, J
OCTOBER 6, 2022**

BETWEEN

GEORGE THUNGU CLAIMANT

AND

DHL EXEL SUPPLY CHAIN (K) LIMITED RESPONDENT

RULING

1. On April 19, 2018, ON Makau J dismissed the claimant’s claim for want of prosecution. This ruling responds to the claimant’s application brought by notice of motion dated September 6, 2021 seeking reinstatement of the claim.
2. The motion is supported by the claimant’s own affidavit and is based on the following grounds:
 - a. That on March 26, 2018, the deputy registrar served a notice to show cause for April 19, 2018, upon the claimant’s counsel;
 - b. That the parties were in the process of negotiating an out of court settlement and neither the claimant nor the respondent appeared in court on the aforementioned date;
 - c. That due to the above inadvertence the suit was dismissed for non-attendance and/or want of prosecution;
 - d. That failure to attend court on the scheduled date was not deliberate at all;
 - e. That the claimant is still keen and willing to prosecute his case and asks the court to give him a second chance;
 - f. That due to the foregoing, it is in the interest of justice and fairness that this application be allowed.



3. The respondent opposes the application by a replying affidavit sworn by its counsel, Victor Njenga on May 4, 2022.
4. Counsel denies that the parties were pursuing an out of court settlement as alleged by the claimant. He points out that the only correspondence on record is a letter from the claimant's Advocate dated July 6, 2020, two years after the matter had been dismissed.
5. Mr Njenga further points out that the present application was filed on September 6, 2021, three years after dismissal of the matter.
6. He adds that there is no evidence that the claimant has followed up with his advocates since 2014, when the matter was filed.
7. The claimant filed his claim on August 13, 2014 and according to the court record, the last time the matter came up in court was August 15, 2016 when the claimant was absent. The matter remained dormant until April 19, 2018, when the court itself fixed it for notice to show cause why it should not be dismissed for want of prosecution.
8. The claimant admits having been aware of the notice to show cause but chose to ignore it, ostensibly because there were some out of court negotiations between himself and the respondent.
9. On its part, the respondent denied the existence of any such negotiations and the claimant did not provide any proof thereof. Indeed, the only letter availed is one written by the claimant's advocates two years after dismissal of the claim.
10. Moreover, there was inordinate delay in bringing the present application, which was not explained. On the whole, I find no reason to resuscitate a matter that was dismissed four years ago.
11. The claimant's application dated September 6, 2021 is therefore disallowed.
12. Each party will bear their own costs.

Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 6TH DAY OF OCTOBER 2022

LINNET NDOLO

JUDGE

Appearance:

Miss Kiruki for the claimant

Mr. Kahura for the respondent

