



REPUBLIC OF KENYA



**KENYA LAW**  
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**Makau v Cook 'N' Lite Ltd (Cause 902 of 2016)  
[2022] KEELRC 13299 (KLR) (24 November 2022) (Ruling)**

Neutral citation: [2022] KEELRC 13299 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA  
CAUSE 902 OF 2016  
AK NZEI, J  
NOVEMBER 24, 2022**

**BETWEEN**

**MAURICE MWENDWA MAKAU ..... CLAIMANT**

**AND**

**COOK 'N' LITE LTD ..... RESPONDENT**

**RULING**

1. This is a 2016 suit, having been filed in this court on November 25, 2016. Trial however commenced before me on June 9, 2022 when the claimant testified and closed his case. I then fixed the case for defence hearing on September 20, 2022.
2. On September 20, 2022, both the respondent and/or its witnesses and their counsel did not attend court. Counsel appearing for the claimant told the court that she was ready to proceed with the hearing. Counsel further told the court that Mr Mwakireti Advocate, for whom she was holding brief, had been telephoned by the firm of Advocates on record for the respondent, Aboo & Company Advocates, and informed that counsel handling the matter was indisposed.
3. This court made the following orders:-
  - a. today's date was taken in the presence of both counsel.
  - b. this is a 2016 matter, and there is no appearance either by the respondent or his Counsel.
  - c. the respondent's case is hereby marked as closed.
  - d. the claimant shall file and serve written submissions within 14 days of today.
  - e. the respondent may file and serve written submissions within 14 days of service.
  - f. mention on 24/10/2022 to fix a date for judgment.



4. The claimant's written submissions were filed on October 6, 2022 while the respondent's written submissions were file on October 21, 2022.
5. When the suit was mentioned in court on October 24, 2022 for purposes of fixing a judgment date, counsel for the respondent informed the court that she intended to file a formal application to re-open the defence case. The court granted counsel two days to file a formal application, and fixed the matter for mention on 3<sup>rd</sup> November 2022.
6. On October 26, 2022, the respondent filed the notice of motion dated October 26, 2022 and sought the following orders:-
  - a. that this court do vacate and/or set aside its proceedings of September 20, 2022 whereby it closed the respondent/applicant's case.
  - b. that this court do reopen the respondent/applicant's case to enable it to call its witness and to produce documents.
7. That is the application before me, and it supported by the supporting affidavit of Cynthia Orange Advocate sworn on October 26, 2022. Counsel depones that she was taken ill on September 20, 2022 and was required to receive urgent medical attention due to incessant tooth ache. A note dated September 20, 2022 indicating that the deponent had been seen at a dental clinic for treatment was annexed to the supporting affidavit.
8. The application is opposed by the claimant vide a replying affidavit of Francis Mwakireti Advocate sworn on November 1, 2022. Counsel depones that the court closed the respondent's case on September 20, 2022 upon noting that neither the respondent nor its counsel were in court. Counsel further deponed that Miss Orange Advocate should have instructed another counsel, either from the firm of Aboo & Company Advocate which has a number of Advocates, or ensure that the respondent's witness was in court, to demonstrate that the respondent was keen to proceed with the hearing save for Counsel's sickness.
9. I have noted from the court's record that when the claimant's case was heard in court on June 9, 2022, the respondent was represented by Miss Ngure Advocate. The court's record does not show that Miss Ngure Advocate was holding brief for Miss Orange on the aforesaid date. No good reason has been given as to why both the respondent and/or its witness and the respondent's Counsel did not attend court on September 20, 2022.
10. I decline to vary or to set aside this court's orders dated September 20, 2022. The Notice of Motion dated October 26, 2022 therefore fails, and is hereby dismissed with no order as to costs.
11. Both parties having filed their respective submissions as ordered on September 20, 2022, a judgment date shall be fixed.
12. Orders accordingly.

**DATED, SIGNED AND DELIVERED AT MOMBASA THIS 24<sup>TH</sup> DAY OF NOVEMBER 2022**

**AGNES KITIKU NZEI**

**JUDGE**

**ORDER**



In view of restrictions on physical Court operations occasioned by the COVID-19 Pandemic, this Ruling has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of Court fees.

**AGNES KITIKU NZEI**

**JUDGE**

Appearance:

Mr. Mwakireti for Claimant

Miss Orenge for Respondent

