



**Kiti & 3 others v Milly Fruits Processing Limited (Cause 651 of 2015)
[2022] KEELRC 13190 (KLR) (10 November 2022) (Ruling)**

Neutral citation: [2022] KEELRC 13190 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
CAUSE 651 OF 2015
AK NZEI, J
NOVEMBER 10, 2022**

BETWEEN

**ANTHONY KITI 1ST CLAIMANT
MOHAMMED ABDALLA 2ND CLAIMANT
ATHMAN ABDALLA 3RD CLAIMANT
JOHN MAMBO KIRAO 4TH CLAIMANT**

AND

MILLY FRUITS PROCESSING LIMITED RESPONDENT

RULING

1. Before me is a Notice of Motion dated 14th June 2022 and filed by the Claimant/Applicants on 20th June 2022. The Claimant/Applicants seek an order to set aside the dismissal order dated 23rd March 2022.
2. The application is supported by an affidavit of Samuel Odhiambo Eleakim Advocate sworn on 14th June 2022. It is deponed in the said affidavit that Counsel for the Claimant/Applicants was not linked to the Court's online platform when the suit herein was virtually called out for hearing on 23rd March 2022. Counsel depones that on the said date, he first linked into Hon. Ongaya J's Court for other matters and that when he finally linked into this Court, the suit herein had already been called out and dismissed upon an application by the Respondent's Counsel in that regard. Counsel further deponed that the Claimants were in his offices on the said date, waiting for their matter to be allocated time for hearing.
3. I have noted that none of the Claimants who are said to have been in the Claimants' Advocate's office, ready for the hearing on 23rd March 2022, has sworn an affidavit.



4. The application is opposed by the Respondent whose Counsel, Eddah Kerubo, swore and filed a replying affidavit on 5th July 2022. It is deponed in the said replying affidavit that when the suit herein came up for hearing on 22nd March 2022, neither the Claimants nor their Counsel attended Court and that no proceedings have been exhibited to show that Counsel for the Claimants was, indeed, before another Court.
5. Rule 22(2) of the Employment and Labour Relations Court (Procedure) Rules 2016 provides as follows:-

“(2) subject to paragraph (1), where a party fails to attend Court on the day fixed for hearing, the Court may dismiss the suit except for good reason to be recorded.”
6. All the five Claimants and their Counsel were not before the Court on 22nd March 2022 when the suit was called out for hearing, and the Court was not given any reason for the absence. The Respondent’s Counsel was within the Respondent’s right to apply for dismissal of the suit, and the suit was accordingly dismissed for non attendance on the part of the Claimants.
7. The Claimants have not given any good reason why they and their counsel were not in Court on 22nd March 2022. Further, the Claimant/Applicants seek to set aside a dismissal order dated 23rd March 2022, yet there is no dismissal order dated that date.
8. In view of all the foregoing, I find no merit in the Notice of Motion dated 14th June 2022, and the same is hereby dismissed with no order as to costs.
9. Orders accordingly.

DATED, SIGNED AND DELIVERED AT MOMBASA THIS 10TH 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:

..... for Claimant/Applicants

..... for Respondent

