



**Sitienei v Sirgoi Holdings Ltd & another (Cause 26 of 2019)
[2022] KEELRC 13185 (KLR) (10 November 2022) (Ruling)**

Neutral citation: [2022] KEELRC 13185 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU
CAUSE 26 OF 2019
CN BAARI, J
NOVEMBER 10, 2022**

BETWEEN

HOSEA K. SITIENEI CLAIMANT

AND

SIRGOI HOLDINGS LTD 1ST RESPONDENT

BOARD OF DIRECTORS SIRGOI HOLDINGS LTD 2ND RESPONDENT

RULING

1. This ruling relates to a notice of motion application dated March 7, 2022, brought pursuant to sections 1A, 1B, 3 and 3A of the [Civil Procedure Act](#). The applicant seeks orders That:
 - i. Spent
 - ii. The honourable court be pleased to reinstate the claimant's suit and give directions that the same proceeds to be heard in the interest of justice
 - iii. The costs of the application be provided for.
2. The application is supported by the grounds on the face of the motion, and the supporting affidavit of Hosea Sitienei, the claimant herein. The crux of the application is that the suit herein was filed on March 14, 2019, and pleadings closed on August 29, 2019, upon the claimant filing a response to the respondents' defence as well as a defence to the respondents' counter claim.
3. The claimant avers that he fixed a mention for directions on January 18, 2022, and served a mention notice upon the respondents. It is his assertion that the court fixed a hearing date for the suit in the absence of both parties.
4. The claimant further avers that he exercised due diligence and established that the matter had been scheduled for hearing on February 1, 2022 and again, notified the respondents of the hearing date.



5. The claimant avers that on the hearing date, he lodged in but his call dropped before his matter was called out, and his effort to re-join the court on-line were not fruitful, and that he only learnt later that his suit had been dismissed.
6. It is the claimant's position that the turn of events were beyond him as internet challenges are bound to happen and/or get interrupted, and when they do, they should not be visited upon the claimant who had demonstrated effort to prosecute his suit.
7. The respondents opposed the application. They aver that since the close of pleadings on August 29, 2019, the claimant had failed to prosecute his case before this court.
8. The respondents further aver that the onus to prove that the network dropped, lies on the one who alleges-the claimant/applicant. The respondent further avers that no evidence has been produced to show that the claimant's network dropped or that they logged-in at all.
9. Parties sought to canvass the application through written submissions. Both parties filed submissions.

Determination

10. I have considered the application, the grounds and affidavit in support, the replying affidavit in opposition and the parties' submissions. The issue for determination is whether the claimant/applicant has justified the reinstatement of this suit.
11. The applicant's case is that the matter was set down for mention for directions, and that the court proceeded to fix a hearing date in the absence of the parties.
12. This assertion is unsupported by the court record. It is indeed true that the claimant's counsel took the date for directions at the registry, and on the date, one Ms Waweru was present holding brief for Mr Katwa for the respondent, but the claimant was absent.
13. The court then proceeded to give a hearing date and an order for a hearing notice to issue to the claimant. On the February 1, 2022 which was the hearing date, the claimant and his counsel were absent, while yet again, Ms Waweru was present holding brief for Mr Katwa for the respondent.
14. The court dismissed the suit on account of non-attendance of the claimant and his counsel, and considering that the matter was filed way back in 2019.
15. A keen look at the court record, show that though pleadings in this suit closed in August, 2019, the suit was set down for directions on February 6, 2020. The matter was not mentioned on this date, though no reasons was given as to why the file was not placed before a judge for directions as listed, and the next time the matter came before court for mention was on January 18, 2022.
16. Premised on the fact that the matter was fixed for directions by the claimant on at least three occasions, I find that the circumstances of the case, justify the court's exercise of discretion in favour of reinstating the suit.
17. The result is that the court finds the application dated March 7, 2022, merited and is allowed in the following terms:
 - i. That the claimant's suit be and is hereby reinstated for hearing and determination on merit.
 - ii. The costs of the application shall be in the cause
18. Orders of the court.



**SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT KISUMU THIS
10TH DAY OF NOVEMBER, 2022.**

CHRISTINE N BAARI

JUDGE

Appearance:

Mr Omusundi present for the claimant/applicant

N/A for the respondents

Ms Christine Omollo-C/A

