



**Oduori v Twenty Cube Logistics Ltd & another (Cause 19 of 2019)
[2022] KEELRC 13146 (KLR) (3 November 2022) (Ruling)**

Neutral citation: [2022] KEELRC 13146 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
CAUSE 19 OF 2019
AK NZEI, J
NOVEMBER 3, 2022**

BETWEEN

CHARLES MDADI ODUORI CLAIMANT

AND

TWENTY CUBE LOGISTICS LTD 1ST RESPONDENT

EXCELLENT SERIVES FREIGHERS LIMITED 2ND RESPONDENT

RULING

1. The application before me is the respondent's notice of motion dated April 11, 2022, and orders sought therein are as follows:-
 - a. That the *ex-parte* proceedings of March 14, 2022 and the claimant's written submissions dated March 28, 2022 be set aside to allow fixing of *inter-partes* hearing.
 - b. That the respondent/applicant be allowed to file a witness statement.
2. The application is predicated on the supporting affidavit of Salim Mwawaza, the Regional Manager of the Kenya Federation of Employers, sworn on April 11, 2022. It is deponed in the said affidavit:-
 - a. That the respondent/applicant was served with a hearing notice for March 14, 2022.
 - b. That it was not intentional for the respondent/applicant and/or its counsel to fail to attend court on March 14, 2022; but inadvertently failed to diarise the case.
 - c. That the respondent/applicant became aware of the position of the matter on March 30, 2022 when it was served with the claimant's closing submissions.
 - d. That the respondent further seeks the court's indulgence to file a witness statement.



- e. That the respondent/applicant stands to suffer heavily in the event that judgment is delivered without her case being heard.
3. The application is opposed by the claimant whose Advocate, MN Waweru, filed a replying affidavit sworn by himself on May 27, 2022. It is deponed in the said affidavit:-
 - a. That the respondent/applicants have not offered any plausible reason in seeking the draconian order to set aside the proceedings of March 14, 2022 together with submissions of the claimant.
 - b. That the respondent was on January 20, 2022 served with a hearing notice informing them that the matter was fixed for hearing on March 14, 2022.
 - c. That the in-house negligence of the respondents ought not to be visited upon the claimant who has done everything required by law to seek justice in this court.
4. Hearing of the claimant's case proceeded on March 14, 2022 when the claimant testified and closed her case. The respondent/applicants have admitted having had notice of the said hearing, which the court heard was served on January 20, 2022. The respondent/applicants have not given any valid reason why the respondent/applicants and/or their witnesses did not attend court on March 14, 2022. It is, also, worthy noting that the respondent/ applicants never filed any witness statement, and that as such they were not prepared to present a witness at the trial. Their failure to attend court for hearing on March 14, 2022 cannot be said to have been due to any other reason. In any case, an allegation of inadvertent failure to diarise a matter lacks validity unless the allegation is supported by relevant material demonstrating the quality of the alleged inadvertence. A mere allegation of failure to diarise a matter is not reason enough to set aside the court's proceedings and orders closing the case and calling for submissions by parties.
5. Further, the respondents' failure to file witness statements since September 24, 2019 when they filed response to the claim herein has not been explained. The suit was mentioned in court twice (on September 24, 2021 and November 29, 2021 respectively) before a hearing date was finally fixed, and the respondents never indicated that they intended to file any further documents and/or witness statements. Service of a hearing notice on the respondents on January 20, 2022 did not remind the respondents to revisit their record and to confirm their readiness for the trial. There is a clear demonstration of negligence and possibly deliberate inaction on the part of the respondent/applicants. The wheels of justice will not be slowed down by this, they must move on.
6. Having said that, I find no merit in the notice of motion dated April 11, 2022. The same is hereby dismissed with costs.

DATED, SIGNED AND DELIVERED AT MOMBASA THIS 3RD 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/Respondent

..... for Respondent/Applicant

