



**Ungu v County Government of Meru (Cause E031 of 2021)
[2022] KEELRC 13577 (KLR) (19 December 2022) (Ruling)**

Neutral citation: [2022] KEELRC 13577 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MERU
CAUSE E031 OF 2021
ON MAKAU, J
DECEMBER 19, 2022**

BETWEEN

CHRISTINE KAWIRA UNGU CLAIMANT

AND

COUNTY GOVERNMENT OF MERU RESPONDENT

RULING

1. This ruling relates to the claimant's notice of motion dated September 22, 2022 brought under article 159(2) (d) of the Constitution, rule 33 (1)(b), (c) and (5) of the Employment and Labour Relations Court (Procedure Rules) 2016 and all other enabling provisions of the law. The application seeks for the following orders;
 - a. That this honourable court be pleased to review and set aside its orders dated July 19, 2022 dismissing the petition for non-attendance and reinstate this claim for hearing on merits.
 - b. That costs of this application be provided for.
2. The application is premised on the grounds set out on the body of the motion and supporting affidavit sworn on September 22, 2022 by the claimant. In brief the claimant contends that the reasons for failure to attend court on July 19, 2022, when the suit was dismissed is because she was not served with a notice to attend court.
3. Further the claimant contends that she has a good cause of action against the respondent and she is desirous to prosecute it; that by dismissing the suit without prior notice amounts to condemning her unheard; that unless the suit is reinstated she will be prejudiced and her constitutional rights breached; and that it is just and fair if the orders sought be granted.
4. The respondent opposed the application by filing a replying affidavit. In her brief the respondent contends that the claimant has lied to the court.



5. The application was disposed of by unwritten submissions, but the respondent chose to rely on the replying affidavit only.
6. I have carefully considered the application, affidavits and written submissions. The main issue for determination is whether the claimant has shown sufficient cause to warrant setting aside of the order dismissing her suit on July 19, 2022.
7. The claimant stated that the suit was fixed for pre-trial directions on July 5, 2022 but on that day neither she nor her counsel were let in the virtual court despite waiting in the lobby most of the morning hours. She thereafter perused the court file and found that the suit was dismissed by the court on July 19, 2022 for want of prosecution.
8. I have perused the court file and confirmed that the suit was fixed for mention on July 5, 2022 for compliance and court directions. The court record shows that none of the parties attended court and the matter was fixed for directions on July 19, 2022 and the deputy registrar of the court was directed to serve the parties.
9. On July 19, 2022, none of the parties attended court and the court dismissed the suit for want of prosecution. There is nothing to show that the court satisfied itself that the parties were served with notice to attend court on that day.
10. There is copy of mention notice dated July 6, 2022 by the deputy registrar of the court. There is however no evidence that it was ever served on the parties. The claimant has maintained that she was never served with any notice to attend court on July 19, 2022 and she believes that the reason why the respondent did not attend court was also because it was not served with any notice.
11. Having considered all the facts and the circumstances of the case, I find that the claimant has demonstrated sufficient cause to warrant the court to exercise its discretion in favour of the claimant. She has suit which discloses reasonable cause of action and she is desirous to prosecute the same. She had filed all her pleadings, witness statements and documents in readiness for the hearing. The suit was dismissed before expiry of one year after filing.
12. She was also not served with a notice to show cause why the suit should not be dismissed for want of prosecution as required by rule 16 of the *Employment and Labour Relations Court Procedure Rules*. It is in the interest of justice to grant the orders sought otherwise the claimant, will be prejudiced by being banished forever from the seat of justice. The respondent will not suffer any prejudice which cannot be compensated by costs.
13. Consequently, I allow the application dated September 22, 2022 with the effect that the claimant's suit herein is reinstated for hearing and determination on merits. Costs of the application be in the main suit.

DATED, SIGNED AND DELIVERED AT NYERI THIS 19TH DAY OF DECEMBER, 2022.

ONESMUS N MAKAU

JUDGE

ORDER

In view of the declaration of measures restricting court operations due to the Covid-19 pandemic and in light of the directions issued by his Lordship, the Chief Justice on April 15, 2020, this judgment has been delivered to the parties online with their consent, the parties having waived compliance with rule 28(3) of the *ELRC Procedure Rules* which requires that all judgments and rulings shall be dated, signed and delivered in the open court.



ONESMUS N MAKAU
JUDGE

