



**Parsitau v Kongoni Game Conservation Ltd (Cause 423 of 2016)  
[2022] KEELRC 13496 (KLR) (13 December 2022) (Ruling)**

Neutral citation: [2022] KEELRC 13496 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU  
CAUSE 423 OF 2016  
HS WASILWA, J  
DECEMBER 13, 2022**

**BETWEEN**

**REMPEIYAN PARSITAU ..... CLAIMANT**

**AND**

**KONGONI GAME CONSERVATION LTD ..... RESPONDENT**

**RULING**

1. The application for determination is the claimant/applicant, Notice of motion dated June 23, 2022, brought pursuant to rule 17 of the *Employment and Labour Relations Court(Procedure) Rules*, 2016, section 12 of the *Industrial Court Act* and all other enabling provisions of law seeking the following orders; -
  - a) Spent.
  - b) That the orders of this honourable court of the June 21, 2022 dismissing the claimant's claim for non-attendance on the part of the claimant/ applicant's advocate be set aside.
  - c) That this honourable court reinstate the claimant's claim dated October 10, 2016 and to be heard on the part of the claimant's advocates merit.
  - d) That the costs of this application be provided for.
2. The application is based on the following grounds; -
  - a) That the claim herein was dismissed for non-attendance by the court on the June 21, 2022.
  - b) That the claimant's advocates had diarized the hearing date as June 23, 2022 instead of June 21, 2022 and therefore the non-attendance was not on purpose but an inadvertence on the part of the claimant's advocates. That they even served the respondent with the hearing notice for June 23, 2022



- c) That they realized on the June 23, 2022 that their claim was slated for June 21, 2022 and upon perusal of the court file, they realized that the claim had been dismissed for non-attendance.
3. The application is also supported by the affidavit of Julius Kamau Muthanwa, the advocate ceased of this matter on behalf of the claimant, sworn on the June 23, 2022. The affiant reiterated the grounds in the application and in addition stated that the claimant is keen and desirous of prosecuting claim to its logical conclusion.
  4. It is contended that the issuance of the orders sought, will not in any way prejudice the respondent, rather that it will enable the court determine the issues raised in the claim on merit.
  5. The respondent was served with this application through their representative email address on the June 23, 2022 as evidence in the affidavit of Julius Kamau Muthanwa Advocate, however they have not filed any response.
  6. Directions were given for the application to be disposed of by way of written submission, the claimant filed submissions on the September 26, 2022, However no submissions were filed for the respondent.

### **Applicant's submissions.**

7. The advocates for the claimant submitted that the failure to attend court on the June 21, 2022 was due to mistake by the advocates for the claimant who diarized the hearing date as June 23, 2022 instead of June 21, 2022. It was argued that mistake of the advocate should not be visited on a party who has and always been keen in prosecuting its claim and was infact ready for hearing on the June 23, 2022. To support the said argument, the claimant cited the case of *Bank of Africa Kenya Limited v Put Sarajevo General Engineering Company limited and 2 others* [2018] eklr where the Court held that;  

“a mistake is a mistake. It is no less a mistake because it is an unfortunate step. It is no less pardonable because it was committed by a senior counsel.....the door of justice is not closed because a mistake has been made by a lawyer of experience who ought to know better. The court may not condone it but it ought to certainly do whatever necessary to rectify it in the interest of justice.”
8. On that basis, the claimant submitted that the failure in attending court on the June 21, 2022 was based on an honest mistake which they have explained and illustrated by evidence and urged this court to exercise its discretion and allow the application to enable the claimant prosecute its case on merit. He added that the claimant has a right under article 50 to be heard.
9. He argued in conclusion that this application has been filed in a timeously manner as such prayed for the same to be allowed.
10. I have examined the averments of the parties herein. The application stands unopposed and the applicant has justified his counsel's absence on the date of hearing.
11. To avoid a miscarriage of justice, I will allow this application and order reinstatement of this claim for hearing on merit.
12. Costs in the cause.

**RULING DELIVERED VIRTUALLY THIS 13<sup>TH</sup> DAY OF DECEMBER, 2022.**

**HON LADY JUSTICE HELLEN WASILWA**

**JUDGE**



**In the presence of:-**

**No appearance for parties**

**Court assistant – Fred**

