



**Ngunjiri v Middle East Bank Kenya Limited (Cause 97 of 2019)
[2022] KEELRC 13469 (KLR) (8 December 2022) (Ruling)**

Neutral citation: [2022] KEELRC 13469 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
CAUSE 97 OF 2019
AK NZEI, J
DECEMBER 8, 2022**

BETWEEN

GABRIEL MURAYA NGUNJIRI CLAIMANT

AND

MIDDLE EAST BANK KENYA LIMITED RESPONDENT

RULING

1. When the suit came up for hearing on March 8, 2022, both parties did not attend court. The court dismissed the suit for non-attendance on the part of both parties. Rule 22(2) of the [Employment and Labour Relations Court \(Procedure\) Rules, 2016](#) provides as follows:-

“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.”
2. Both parties did not attend court on March 8, 2022, and there being no reason and/or good reason given for their failure to attend court, the suit was dismissed for non-attendance.
3. On the same date (March 8, 2022), the claimant filed the notice of motion evenly dated seeking to set aside the dismissal order. The application is supported by the claimant’s supporting affidavit sworn on the said date. It is deponed in the said affidavit that the claimant’s counsel had difficulties logging onto this court’s online platform in the morning of March 2022, and only managed to log in thirty minutes late; by which time the suit had already been called out and dismissed for non-attendance. The claimant further deponed that he was in his advocate’s office as early as 8.30am on March 8, 2022, ready to proceed with the hearing of his case, and urged the court to set aside the dismissal order, reinstate the suit and hear and determine the same on merit.
4. The application is opposed by the respondent. Both parties filed written submissions for and against the application pursuant to the court’s directions in that regard, which I have considered.



5. The *Employment and Labour Relations Court (Procedure) Rules* 2016 are silent on setting aside of dismissal orders. On the other hand, section 12(3) (viii) of the *Employment and Labour Relations Court Act* provides that this court may give “any other appropriate relief as the court may deem fit to grant.” Setting aside of dismissal orders, in my view falls in the category of numerous reliefs which are not specified, either in the Act or in the court’s Rules, but which are routinely sought by litigants before the court almost on day to day basis, and which the court can justly grant.
6. I am satisfied that the claimant/ applicant has demonstrated that the setting aside order sought in the application is merited. Accordingly, the notice of motion dated March 8, 2022 is allowed in the following terms:-
 - a) the dismissal order dated March 8, 2022 is hereby set aside.
 - b) the claimant shall prosecute his suit within six months of this ruling, failing which the suit shall stand dismissed.
 - c) the suit shall be mentioned in court on December 14, 2022 for fixing of a hearing date.
 - d) Costs of the application shall be in the cause.
7. Orders accordingly.

DATED, SIGNED AND DELIVERED AT MOMBASA THIS 8TH DAY OF DECEMBER 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:

Mr. Wachira Claimant

Mr. Karanja Respondent

