



Nyangenya v National Police Service Commission & 2 others (Cause E695 of 2021) [2022] KEELRC 13446 (KLR) (8 December 2022) (Ruling)

Neutral citation: [2022] KEELRC 13446 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E695 OF 2021
L NDOLO, J
DECEMBER 8, 2022**

BETWEEN

KENNEDY MOMANYI NYANGENYA CLAIMANT

AND

NATIONAL POLICE SERVICE COMMISSION 1ST RESPONDENT

NATIONAL POLICE SERVICE 2ND RESPONDENT

COMMANDANT, GENERAL SERVICE 3RD RESPONDENT

RULING

1. By his application dated July 28, 2022, the claimant seeks reinstatement of his earlier application dated 19th August 2021, which was dismissed for non-attendance on 19th July 2022.
2. The Claimant also seeks reinstatement of the interim orders vacated by the Court on the said date.
3. The application is supported by the claimant's own affidavit and is based on the following grounds:
 - a. The claimant is an employee of the National Police Service at the rank of Senior Superintendent of Police (SSP) serving under the General Service Unit;
 - b. The Claimant's application dated August 19, 2021 came up for virtual inter partes hearing on July 19, 2022 and was dismissed for non-attendance;
 - c. The claimant's Advocate, Mr. Muia who has conduct of the matter was out of Nairobi in Makindu, Makueni County and could not log in for the hearing due to network problems and poor connectivity;
 - d. The claimant had interim orders in force which lapsed after the application dated August 19, 2022 was dismissed;



- e. There will be no prejudice if the application is reinstated for hearing on merit.
4. The 2nd and 3rd respondents filed grounds of opposition stating that:
 - a. The application is an outright abuse of the court process and a waste of judicial time. The claimant has not provided adequate grounds to warrant the court to exercise its discretion to reinstate an application as provided under order 12 of the *Civil Procedure Rules*;
 - b. The claimant has not endeavoured to provide any evidence to demonstrate that he indeed attempted to log into the virtual court. There is no electronic or photographic evidence such as a call log or screenshot to show an attempt made to log in or to call the court or counsel for the respondents to explain the difficulties. A blanket allegation that there was poor network in Makindu on the material date is misleading;
 - c. The claimant is not desirous of prosecuting the application as on the date of the hearing, neither the claimant nor his Advocate was present in court despite the hearing being virtual;
 - d. The claimant has not demonstrated any vigilance in prosecuting the main application dated August 19, 2021 since interim orders were granted and has on several occasions adjourned its hearing;
 - e. Equity aids the vigilant and not the indolent (see *Leonard Oseme Karani v Sunflag Textile & Knitwear Mills Limited* [2019] eKLR);
 - f. The claimant cannot litigate on the same issue in perpetuity. There must be an end to litigation;
 - g. Granting the orders sought would open a Pandora's box where any party desirous of rolling back the wheels of justice would allege that there were technical challenges in logging into virtual court and thus undo what a vigilant party could rightly have achieved.
5. The order sought by the claimant is discretionary. In making his plea, he states that failure to attend court on the day his application dated August 19, 2021 was dismissed, was occasioned by internet challenges. This is not an uncommon occurrence and I have no reason to disbelieve the averments made on oath.
6. I therefore exercise discretion in favour of the claimant and allow his application dated July 28, 2022, with the consequence that the earlier application dated August 19, 2021 is reinstated.
7. Regarding the request for reinstatement of the interim orders vacated with the dismissal of the application, the only thing I will say is that with the dismissal of the application, the interim orders dissipated and the claimant will have to make a fresh plea in this regard.
8. The costs of the application will be in the cause.
9. These are the orders of the court.

DELIVERED VIRTUALLY AT NAIROBI THIS 8TH DAY OF DECEMBER 2022

LINNET NDOLO

JUDGE

Appearance:

Mr. Muia for the Claimant

Ms. Rwenji h/b Ms. Opiyo for the 1st Respondent



Mr. Mulili for the 2nd and 3rd Respondents

