



REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS COURT OF KENYA

AT NYERI

ELRC NO.5 OF 2020

(Before D.K.N.Marete)

FRANCIS MUCHOKI NJUKI.....CLAIMANT

VERSUS

CO-OPERATIVE BANK OF KENYA LIMITED.....RESPONDENT

RULING

This is an application dated 1st April, 2021 and comes out as follows;

- 1. That this matter be certified urgent and be heard on a priority basis.*
- 2. That the Orders of this Honourable Court issued on 25th March, 2021 be set aside.*
- 3. That the suit herein be reinstated and be heard on merit.*
- 4. That costs of this application be in the cause.*

It is grounded as follows;

- 1. That the suit was dismissed for non-attendance on 25th March 2021.*
- 2. That the suit was scheduled to be heard on 25th March 2021.*
- 3. That counsel for the claimant received the link to join court via Microsoft teams from the Respondent's counsel at 9:13Am. She tried to log in using the link however she was kept waiting in the lobby.*
- 4. That our efforts to contact the court clerk for assistance deemed futile as all out calls went unanswered.*
- 5. That it was only perusal of the Court file that we established that the suit had been dismissed for non-attendance.*
- 6. That it is just and mete that this application be granted.*

The Respondent in her Grounds of Opposition opposes the application and prays that the same be dismissed with costs. This comes out thus;

- 1. The application is a grave abuse of the court process and does not lie.*
- 2. The Supporting Affidavit of Rwito Kendi E. sworn in support of the application does not make out a case to warrant the orders sought.*
- 3. The applicant has not provided any and/or adequate material to this Honourable Court so as to warrant the orders sought.*
- 4. The application is incompetent and bad in law as it has been brought under the wrong provisions of the law.*

5. *The application has no merits whatsoever to warrant the orders sought.*

The Claimant/ Applicant raises a case of technology for his failure to attend virtual court. The Respondent disputes this and avers that this is not serious and amounts to an excuse for revival of the suit. It is all debate, noise and no more.

The era of the virtual proceedings in court poses great challenges to parties and courts in a determination of cases of non-attendance and want of prosecution. Scapegoating and various other excuses shall always be there to support such issues. Courts beware.

It is not possible to verify the veracity of the Applicants averments and submissions in support of his case. This can only be awarded on a test of balance of probabilities. This court, however, sounds a loud warning to litigants of the future. This facility or defence may not be encouraged or readily available in the future. Courts would viciously scrutinise the merits of such applications to obviate inertia.

I am therefore inclined to allow this application with orders that each party bears their costs of the application.

DATED AND DELIVERED AT NYERI THIS 16TH DAY OF JUNE, 2021

D.K.NJAGI MARETE

JUDGE

Appearances

1. Miss Kendi instructed by Rwito Imbaya & company Advocates for the Claimant/Applicant
2. Mr.Kimondo Mubea instructed by Kimondo Mubea & company Advocates for the Respondent.