



**Suyinka v Kenya Broadcasting Corporation (Cause 103 of 2013)
[2024] KEELRC 13535 (KLR) (20 December 2024) (Ruling)**

Neutral citation: [2024] KEELRC 13535 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 103 OF 2013
SC RUTTO, J
DECEMBER 20, 2024**

BETWEEN

LEMPAA VICTOR SUYINKA CLAIMANT

AND

KENYA BROADCASTING CORPORATION RESPONDENT

RULING

1. On 8th July 2024, when the matter herein came up for Notice to Show Cause why it should not be dismissed for want of prosecution, the Respondent's Advocate Mr. Kagongo, informed the Court that the decretal amount had been settled in full hence the matter was concluded. It is worth pointing out that the Claimant's Advocate was not present in court.
2. In view of the sentiments expressed by the Respondent's Advocate and noting the absence of the Claimant's Advocate, the Court proceeded to mark the matter as settled and directed that the file be closed.
3. Subsequently, the Claimant moved this Court vide a Notice of Motion Application dated 12th August 2024 seeking an order to have the Court set aside and/or vary and/or review its order of 8th July 2024, marking the matter as settled.
4. The Application is premised on the grounds set out on the face thereof and the annexed Affidavit dated 12th August 2024 by Paul Maingi Musyimi, Advocate on record of the Applicant.
5. Grounds in support of the Application are that the Claimant/Applicant is aggrieved by the decision of the Court to mark the matter as settled yet the Respondent has not cleared the balance decretal sum of Kshs.161,943.74/=.



6. That on 8th July 2024, the matter came up for hearing in relation to a Notice to Show Cause why execution should not issue in respect to the balance decretal sum owed by the Respondent following taxation of the matter in Nairobi Civil Appeal No.18 of 2019.
7. On the material day, Counsels for both parties were present in the online forum but the Claimant/Applicant's Advocate unfortunately experienced technological mishaps and was logged out of the meeting.
8. That when the matter was called out and in the absence of the Claimant/Applicant's Advocate, Counsel for the Respondent, Mr. Kangogo acting for the firm of Saende Law Advocates, addressed the court and made misrepresentations to the Court that the decretal sum had been fully paid.
9. The representations were false and maliciously made to mislead this Honourable court and have the matter closed while in fact, the said Counsel knew that the Respondent owed a balance decretal sum of Kshs. 161,943.74/=.
10. That it is therefore in the interest of justice that the said Order be reviewed and the file be reopened to enable parties to fully conclude the matter.
11. The Application is opposed through the Respondent's Grounds of Opposition dated 20th November 2024. The Respondent contends that:
 - a. The application is misconceived, incompetent, an abuse of the Court process, bad in law, and is only anchored to frustrate the Respondent.
 - b. The Applicant has not met the requisite threshold for review/setting aside the orders delivered on 8th July 2024.
 - c. The Application as filed and the prayers sought therein are unmeritorious, an abuse of the court process and should be dismissed with costs to the Defendant's (sic).

Analysis and Determination

12. Evidently, the singular issue for determination is whether the Court should review and set aside its orders of 8th July 2024, marking the matter as finalized.
13. The Applicant's Advocate, Mr. Maingi has averred that on 8th July 2024, he was unable to address the Court when the matter was called out as he experienced technological difficulties. That it is upon readmission to the platform, that he was informed by the Court that in his absence, counsel for the Respondent had addressed the Court that the outstanding decretal amount had been fully satisfied by the Respondent.
14. According to Mr. Maingi, the representations by Counsel were false, fraudulent and maliciously made with the intent of misleading the court and for the Respondent to avoid its obligations to pay out the decretal amount owed.
15. It is his contention that the balance of the decretal amount is still outstanding since the matter was fixed for Notice to Show Cause on 24th June 2024 on the basis that the amount remained unpaid.
16. In support of his assertions, Mr. Maingi annexed to his Affidavit a copy of a letter dated 16th February 2024 addressed to the Respondent's Legal Manager forwarding a Certificate of Taxation for the sum of Kshs 161,943.74.



17. Counsel has further annexed to the Affidavit, a copy of a Mention Notice dated 19th June 2024 served upon the Respondent's Advocate, Saende Law Advocates. As per the Mention Notice, the matter was scheduled to come up for mention on 24th June 2024.
18. The record bears that on 24th June 2024, the matter came up before the Deputy Registrar for directions. Subsequently, the Deputy Registrar directed that the matter be placed before the Judge for Notice to Show Cause on 8th July 2024. Notably, the directions did not elaborate on the nature of the Notice to Show Cause.
19. I say so noting that the matter had been listed to come up on 8th July 2024 for the parties to show cause why the matter should not be dismissed for want of prosecution. To this end, a Notice to Show Cause dated 5th July 2024 had been issued by the Court and served upon both parties. Indeed, the Court was proceeding on the premise of the said Notice as opposed to the Notice to Show Cause alluded to by Mr. Maingi.
20. It is therefore apparent that there was a mix-up and miscommunication with respect to the nature of the court proceedings of 8th July 2024.
21. What's more, it is evident that there are outstanding issues between the two parties more so noting that they are not on the same page with respect to the settlement of the matter.
22. Pursuant to Rule 33 (1) (b) of the Employment and Labour Relations (Procedure) Rules 2016 (now revoked), the court may review its orders on account of some mistake or error apparent on the face of the record.
23. Accordingly, I am persuaded that the instant Application has satisfied the threshold established under Rule 33(1) (b) of the aforementioned Rules hence is meritorious.
24. Therefore, and in the interests of justice, the Application dated 12th August 2024 is hereby allowed. Subsequently, the order made by the Court on 8th July 2024, marking the matter as settled is hereby set aside.
25. There will be no orders as to costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 20TH DAY OF DECEMBER, 2024.

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STELLA RUTTO

JUDGE

In the presence of:

For the Claimant/Applicant No appearance

For the Respondent No appearance

Court Assistant Millicent

