



REPUBLIC OF KENYA



**Muriuki v Mount Kenya University (Civil Case E022 of 2021)
[2024] KEHC 8403 (KLR) (10 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 8403 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CIVIL CASE E022 OF 2021
DO CHEPKWONY, J
JULY 10, 2024**

BETWEEN

PETERSON MURIUKI PLAINTIFF

AND

MOUNT KENYA UNIVERSITY DEFENDANT

RULING

1. The court issued a Notice to Show Cause dated 27th November, 2023, for parties to show cause why the suit should not be dismissed for want of prosecution. When the parties appeared before court on 30th April, 2024, there was an argument on the position of the matter. This court issued directions on 2nd May, 2024 (erroneously indicated as 2nd April, 2024) that there is a pending Notice to Show Cause which should be canvassed by way of written submissions within 14 days with a corresponding leave to the Defendant of a further 14 days.
2. As at the time of writing this ruling, the Plaintiff had not filed any submissions in respect of the Notice to Show Cause. Upon going through the court record, the court issued the Directions on 2nd April, 2024 (read 2/5/2024) both Counsel were present in court but no submissions have been filed to show cause why the suit should not be dismissed for want of prosecution to date.
3. The court further notes that from the record, an interlocutory judgment was entered herein on 13th October, 2021 and formal proof hearing proceeded on 16th March, 2022. The matter was thereafter fixed for Mention for purposes of parties confirming filing of submissions. The Defendant then filed Notice of Motion application dated 23rd August, 2022 which was amended on 29th September, 2022 seeking to set aside the interlocutory judgment and to for extension of time within which to file response to the claim and further pleadings.



4. When the matter came before court on 22nd September, 2022, Counsel for the Plaintiff sought leave to file Replying Affidavit wherein he stated that his client had undergone surgery and was not available to sign the same.
5. On 5th July 2023, the Plaintiff filed a Notice of Motion application seeking injunctive orders against the Defendant for withholding his Diploma certificate in Business Information Technology.
6. On 24th July, 2023, the court allowed both the Notice of Motion applications dated 3rd July, 2023 and 23rd August, 2022. Further, the court deemed the draft Defence as properly filed and served, then directed the matter to be mentioned before the Deputy Registrar for purpose of pre-trial directions.
7. On 29th August, 2023, only the Defendant's Counsel was present and he sought and was granted thirty (30)days leave to file a List of documents and witness statements. The court also directed that a Mention notice to issue upon the Plaintiff.
8. The court notes that neither the Plaintiff nor his Counsel was present in court on 3rd October, 2023 and Mention notice was issued. The Plaintiff also failed to attend court on 5th February, 2024 and it is only until 30th April, 2024, when he appeared in court
9. The court notes that since one year has not lapsed since the last action was taken in the matter, it would be premature to dismiss the suit for want of prosecution. However given that the Plaintiff was given a chance to file a response to the Notice to Show Cause and canvass the same through submissions but failed to do so, it is a clear indication that he is not interested in pursuing the suit further.
10. To avoid clogging the court with backlog, the court finds that the Plaintiff has failed to show cause why the suit should not be dismissed and proceeds to dismiss the suit for want of prosecution as per the provision of Order 17 Rule 2 of the [Civil Procedure Rules](#).

It is so ordered.

**DIRECTIONS DATED, SIGNED AND DELIVERED AT KIAMBU VIA *ELECTRONIC MAIL
THIS ...10TH ...DAY OF ...JULY....., 2024.**

D. O. CHEPKWONY

JUDGE

