



**Kagendo v Generic Brands Limited & another (Cause E955 of 2024)
[2025] KEELRC 2785 (KLR) (16 October 2025) (Ruling)**

Neutral citation: [2025] KEELRC 2785 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E955 OF 2024
ON MAKAU, J
OCTOBER 16, 2025**

BETWEEN

YVONNE KINYA KAGENDO CLAIMANT

AND

GENERIC BRANDS LIMITED 1ST RESPONDENT

DIPLUN GOVINDJI SHAH (AKU) 2ND RESPONDENT

RULING

1. By the notice of motion dated 5th August 2025, the Respondent's sought the following orders:
 - a. That the suit herein be dismissed for non-appearance of the Claimant and want of prosecution.
 - b. Any other orders the court might deem fit.
 - c. Costs of this Application and suit.
2. The motion is supported by the Affidavit sworn on even date by the 2nd Respondent. In brief the Respondent's case is that the Claimant has severally failed to attend court for pretrial directions despite being served with mention notices.
3. The Claimant filed Grounds of Opposition which in my view are facts which ought to have been by way of Affidavits. The Claimant has further annexed exhibits to the said grounds of opposition which is contrary to well settled procedure in civil litigation.
4. The motion was argued orally on 6th October 2025. Ms. Ndunga Learned Counsel for the Respondent urged the motion. She submitted that the Claimant had lost interest in the suit since she failed to attend court for pretrial directions on 13th March 2025, 7th May 2025, 24th June 2025, 15th July 2025 and 31st July 2025. That in all the said instances the Claimant had been served with a mention notice but failed to attend court warranting the Respondent to formally apply for dismissal of the suit.



5. The Counsel submitted that there had been delay in justice as the Claimant had not taken steps towards prosecuting her case and therefore the suit should be dismissed. For emphasis, several authorities were cited including Francis Waithaka Ngaruiko v. Margaret Nyaruiru Kariuki[2019] KEELRC 29 (KLR) where the court held that an indolent litigant should not be allowed to visit injustice upon its opponent by keeping a suit pending indefinitely.
6. Mr. Macharia Advocate for the Claimant opposed the motion by relying on the said grounds of opposition. He submitted that the Claimant was keen on prosecuting her case but was waiting to prosecute her motion to challenge the late filing of defence by the Respondents. He further submitted that the suit was less than one year old and therefore the Respondents were trying to steal a match by filing the instant motion.
7. I have carefully considered the motion, Affidavit, Grounds of Opposition and the submissions by counsel. The main issue for determination is whether the suit should be dismissed for non attendance during pretrial conference.

Analysis

8. The power of the court to dismiss a suit before trial is provided in the Employment and Labour Relations Court Procedure Rules 2024. Rule 40(5) provides that:

“Where party fails to attend a pre-trial conference or fails to comply with the directions made by the Judge in terms of Sub Rule (1), the matter may be fixed for hearing or dismissed, as the case may be”.
9. Again, Rule 43 provides for dismissal as follows:
 - (1) In any suit in which no application has been made in accordance with rule 31 or no action has been taken by either party within one year from the date of its filing, the Court may give notice in writing to the parties to show cause why the suit should not be dismissed and, if no reasonable cause is shown to its satisfaction, may dismiss the suit.
 2. Any party to the suit may apply for dismissal as provided in sub-rule(1).
 3. The court may dismiss the suit for non-compliance with any direction given under this rule or rule 31.
10. Rule 40(5) deals with dismissal for failure to attend pretrial conference while Rule 43 deals with dismissal for want of prosecution for a period of one year from the date of filing the suit. The instant motion relates Rule 40(5) since the Claimant failed to attend several pretrial conferences fixed by the court.
11. The Claimant’s argument was that the suit is not ripe for dismissal because it is less than one year old. The said explanation did not respond to the Respondent’s complaint that the Claimant failed to attend pretrial conference.
12. There is no doubt from the record that the Claimant failed to attend pretrial conference on 13th March 2025, 7th May 2025, 24th June 2025, 15th July 2025 and 31st July 2025. No plausible explanation was tendered for the said failure to attend court for pretrial conference. This is a clear case for dismissal.
13. However, in the interest of justice for the Claimant who might have been messed by her counsel, I will not dismiss the suit but rather condemn the Claimant’s counsel to pay the Respondent Kshs. 4000 for the 4 days he failed to attend the said pre-trial conferences. The said costs shall be paid within



14 days and in default the Respondent will be at liberty to execute against the counsel personally. The suit is fixed for pretrial conference on 28/10/2025.

DATED, SIGNED AND DELIVERED IN VIRTUAL COURT AT NAIROBI THIS 16TH DAY OF OCTOBER, 2025.

ONESMUS MAKAU

JUDGE

Appearance:

No appearance for the Claimant

Ndunga for the Respondent

