

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT**  
**NAIROBI**

**ELRC CAUSE NO E138 OF 2023**

**GODWIN BARECHI BARASA.....**  
**.....CLAIMANT**

**VERSUS**

**KENYA TRADE NETWORK AGENCY.....**  
**RESPONDENT**

**RULING**

**Background**

1. The Respondent has filed the application dated 24<sup>th</sup> March 2025 seeking for orders to dismiss the suit for want of prosecution. The application is based on the grounds that appear on the face thereof and the affidavit of even date.
2. The Respondent contends that the Claimant filed suit in February 2023 whereupon it filed an amended Statement of Response in October 2023. It contends that since then, the Claimant has not taken steps to prosecute the claim.
3. The Respondent asserts that more than one year has lapsed since any activity was undertaken in the cause. As such, it contends that the matter is ripe for dismissal for want of prosecution.
4. The Claimant is opposed to the application. He has filed a replying affidavit dated 9<sup>th</sup> October 2025.

5. According to the Claimant, the instant application is premature. He contends that contrary to the Respondent's assertions, he has been diligent in taking steps towards prosecuting the suit.
6. The Claimant avers that his initial advocates did not act on his instructions to list the cause for disposal. As such, he avers that he took steps to remedy the situation by appointing new advocates in June 2024 to conduct the case. He avers that he should not be blamed for his earlier lawyers' inaction which appeared to have delayed prosecution of the case.
7. The Claimant avers that contrary to the Respondent's contention, this suit has been mentioned on 24<sup>th</sup> June 2025 and 22<sup>nd</sup> September 2025. On this account, he avers that the suit has been active.
8. The Claimant contends that the power to dismiss a suit for want of prosecution is discretionary and should be exercised judiciously. In his view, the court should thus exercise the discretion to disallow the application.
9. The Claimant contends that the court should only dismiss the suit if there is no reasonable explanation for the delay in prosecuting it. He contends that in his case, the delay has been adequately explained.

### **Analysis**

10. The instant application was filed pursuant to rule 43(3) of *the Employment and Labour Relations Court (Procedure) Rules*,

2024. Under rule 43(1), the court is empowered to issue notice *suo moto* to a party to show cause why a suit which has remained inactive for more than one year should not be dismissed for want of prosecution. If the party does not give a reasonable account for the delay, the suit may be dismissed. On the other hand, rule 43(3) entitles either party to the action to move the court for dismissal of such suit. Once the application is made, the other party to the suit is entitled to explain the delay. The court will only dismiss the suit if the explanation given is not reasonable.

11. In the instant case, the Claimant blames his erstwhile lawyers for failure to activate the suit. The court record shows that the Claimant indeed changed his lawyers through a Notice of Change of Advocates dated 4<sup>th</sup> June 2024.
12. The court finds the Claimant's explanation for the delay reasonable. Once he instructed his erstwhile lawyers in the cause, the lawyers were expected to prepare the case for hearing. He could not undertake this exercise directly whilst he had lawyers on record. All that he could do once he noticed that the lawyers were not acting diligently was to remove them. This, he did.
13. In their submissions, the Respondent's lawyers contend that although the Claimant alleges that he took steps to follow up on his case, he has not provided proof of this. The lawyers contend that the Claimant has not provided correspondence

to back his claim that he tried to pursue activation of the matter.

14. The Respondent's counsel's contention presupposes that only documentary evidence is acceptable as proof of follow up. This is incorrect. Follow ups need not be in writing even though this would be the best evidence of the follow ups. They (the follow ups) can be done without being documented. This does not render them any less because they were not done in writing.
15. The Claimant has stated on oath that he made follow ups of his case both with his erstwhile lawyers and the court. This statement on oath is evidence of his attempts in this regard. It is noteworthy that the Respondent did not file a supplementary affidavit to rebut the assertion. As such, the Claimant's contention in this respect remains uncontroverted.

### **Determination**

16. Having regard to the foregoing, the court is satisfied that the explanation which the Claimant has given for the delay in prosecuting the claim is reasonable.
17. Consequently, it declines to dismiss the suit for want of prosecution.
18. Instead, the parties are directed to immediately set down the suit for prosecution.
19. Costs of the application will be in the cause.

**Dated, signed and delivered on the 26<sup>th</sup> day of February,  
2026**

**B. O. M. MANANI**

**JUDGE**

In the presence of:

.....for the Claimant

.....for the Respondent

**ORDER**

**In light of the directions issued on 12<sup>th</sup> July 2022 by her Ladyship, the Chief Justice with respect to online court proceedings, this decision has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28 (3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.**

**B. O. M MANANI**