



REPUBLIC OF KENYA



**KENYA LAW**  
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**Alukwe v My Branded Gear Limited (Cause 542 of 2018)  
[2025] KEELRC 5 (KLR) (16 January 2025) (Ruling)**

Neutral citation: [2025] KEELRC 5 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 542 OF 2018  
L NDOLO, J  
JANUARY 16, 2025**

**BETWEEN**

**DICKSON OLUSENO ALUKWE ..... CLAIMANT**

**AND**

**MY BRANDED GEAR LIMITED ..... RESPONDENT**

**RULING**

1. This ruling determines the Notice of Motion dated 29<sup>th</sup> October 2024, by which the Respondent seeks dismissal of the Claimant's claim for want of prosecution.
2. The Motion is supported by an affidavit sworn by the Respondent's Director, Moses Sanya and is founded on the grounds that:
  - a. The Claimant filed this suit more than 6 years ago, on 9<sup>th</sup> April 2019;
  - b. The case was certified ready for hearing but the Claimant has failed, refused and/or neglected to attend court on all hearing dates;
  - c. By his conduct, the Claimant is no longer interested in having the matter heard;
  - d. A case belongs to a litigant who has a duty to prosecute it diligently and have it heard expeditiously. This Court has discretion to dismiss a suit for want of prosecution;
  - e. It is in the interest of justice that the case is dismissed for want of prosecution.
3. In his affidavit in support of the Motion, Moses Sanya depones that the suit was certified ready for hearing more than 5 years ago, on 5<sup>th</sup> February 2019.
4. Sanya further depones that the case was scheduled for hearing on several occasions being; 7<sup>th</sup> June 2023, 6<sup>th</sup> December 2023, 24<sup>th</sup> April 2024 and 29<sup>th</sup> October 2024. He points out that the Claimant did not attend court on any of these dates.



5. In spite of due notification, the Claimant did not respond to the Respondent's application.
6. The principles to be taken into account in issuing an order for dismissal of a suit for want of prosecution were established in *Ivita v Kyumbu* [1984] eKLR 441 as follows:

“The test is whether the delay is prolonged and inexcusable, and, if it is, can justice be done despite such delay? Justice is justice to both the Plaintiff and Defendant; so both parties to the suit must be considered and the position of the judge too, because it is no easy task for the documents, and, or witnesses may be missing and evidence is weak due to the disappearance of human memory resulting from lapse of time. The Defendant must however satisfy the court that it will be prejudiced by the delay...He must show that justice will not be done in the case due to the prolonged delay on the part of the Plaintiff before the court will exercise discretion in his favour and dismiss the action for want of prosecution. Thus, even if delay is prolonged, if the court is satisfied with the Plaintiff's excuse for the delay, the action will not be dismissed, but it will be ordered that it be set down for hearing at the earliest available time.”

7. Rule 43 of the *Employment and Labour Relations Court (Procedure) Rules* provides as follows:

43.

- (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) If reasonable cause is given to the satisfaction of the Court, it may make such orders as it thinks fit to obtain the expeditious hearing and determination of the suit.
- (3) Any party to the suit may apply for dismissal as provided in sub-rule (1).
- (4) The Court may dismiss the suit for non-compliance with any direction given under this rule or rule 31.

8. Perusal of the court record indicates that this matter was certified ready for hearing on 5<sup>th</sup> February 2019, after which it came up for hearing severally but it did not proceed. On 29<sup>th</sup> October 2024, Counsel on record for the Claimant informed the Court that he had lost contact with the Claimant. The Claimant did not respond to the present application, leaving the lapse in prosecuting the claim unexplained.
9. In the circumstances, the only conclusion to make is that the Claimant has lost interest in the claim, which is consequently dismissed for want of prosecution.
10. Each party will bear their own costs.
11. Orders accordingly.

**DELIVERED VIRTUALLY AT NAIROBI THIS 16<sup>TH</sup> DAY JANUARY 2025**

**LINNET NDOLO**

**JUDGE**

Appearance:

Mr. Wetaba for the Claimant



Mr. Richu for the Respondent

