



**Bakery Confectionery Food Manufacturing & Allied Workers Union (K)
v Sunveat Foods Limited; Temo Trading Services (Interested Party) (Cause
375 of 2019) [2025] KEELRC 889 (KLR) (20 March 2025) (Ruling)**

Neutral citation: [2025] KEELRC 889 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 375 OF 2019
L NDOLO, J
MARCH 20, 2025**

BETWEEN

**BAKERY CONFECTIONERY FOOD MANUFACTURING & ALLIED
WORKERS UNION (K) CLAIMANT**

AND

SUNVEAT FOODS LIMITED RESPONDENT

AND

TEMO TRADING SERVICES INTERESTED PARTY

RULING

1. This ruling is with respect to a notice issued by the Court, requiring the Claimant to show cause why the claim should not be dismissed for want of prosecution.
2. The Claimant responded to the notice to show cause by a replying affidavit sworn by its General Secretary, Danchael Mwangure on 28th October 2024.
3. Mwangure depones that he is aware that vide a ruling delivered on 7th December 2023, the Court joined Temo Trading Services as an Interested Party in these proceedings.
4. He adds that during the hearing of the application for joinder, it emerged that the employees said to have been outsourced to Temo Trading Services Limited had been re-absorbed back by the Respondent.
5. Owing to the foregoing, the Claimant Union is said to have been forced to collect and collate documentary evidence from the Respondent’s unionisable workforce recruited by the Union, to ascertain their employment status.



6. It is deponed that there have been delays in the collection and collation of data and evidentiary material in respect of 203 employees recruited by the Claimant, hence causing delay in filing the necessary amended pleadings in court.
7. Mwangure states that a draft Further Amended Memorandum of Claim is ready and therefore seeks leave to file it in court.
8. He points out that the last time the matter was in court was 7th December 2023 and the notice to show cause taken out on 7th June 2024 was not within the one-year threshold set out in the Procedure Rules.
9. Rule 43 of the Employment and Labour Relations Court (Procedure) Rules sets out the following procedure for dismissal of suits for want of prosecution:
 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.
10. 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.”
11. In this case, the Claimant has duly explained the delay in progressing this matter and the Court is satisfied that the delay is not inordinate. In the circumstances, I direct the Claimant to file and serve its Further Amended Memorandum of Claim within the next seven (7) days from the date of this ruling.
12. Thereafter, the Respondents will have fourteen (14) days to respond to the Further Amended Claim.
13. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 20TH DAY OF MARCH 2025.

LINNET NDOLO



JUDGE

Appearance:

Mr. Amalemba for the Claimant

Mr. Okeche for the Respondent

Mr. Ondego for the Intended Third Party

