



**Shigoli v Dodore Kenya Limited & another (Cause 1890 of 2017)
[2025] KEELRC 1051 (KLR) (3 April 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1051 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1890 OF 2017
L NDOLO, J
APRIL 3, 2025**

BETWEEN

ROSELYNE MATILANI SHIGOLI CLAIMANT

AND

DODORE KENYA LIMITED 1ST RESPONDENT

SIJMEN DE HOOGH 2ND RESPONDENT

RULING

1. On 21st January 2025, the Court, suo moto, served a notice to show cause why this claim should not be dismissed for want of prosecution.
2. In response, the Claimant's Counsel, Walter Nyamwaya swore an affidavit on 3rd March 2025.
3. 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.



4. 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.”

5. In his affidavit in response to the notice to show cause, the Claimant’s Counsel Walter Nyamwaya concedes having lost contact with the Claimant in June 2024.
6. Counsel however depones that the Claimant has now reached out to him, with instructions to proceed with the matter.
7. I will therefore exercise discretion in the Claimant’s favour, and allow her a final chance to take steps towards prosecuting her claim on priority basis.
8. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 3RD DAY APRIL 2025

LINNET NDOLO

JUDGE

Appearance:

Mr. Nyamwaya for the Claimant

No appearance for the Respondents

