



**Kenya Engineering Workers Union v East Aluminium Company Limited
(Cause E873 of 2023) [2025] KEELRC 1443 (KLR) (16 May 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1443 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E873 OF 2023**

**AK NZEI, J
MAY 16, 2025**

**BETWEEN
KENYA ENGINEERING WORKERS UNION CLAIMANT
AND
EAST ALUMINIUM COMPANY LIMITED RESPONDENT**

RULING

1. The Claimant herein sued the Respondent vide a Memorandum of Claim that is shown to have been filed in this Court on 28th October, 2023. The Claimant seeks various reliefs on behalf of some seven grievants named in the Memorandum of Claim. There is on record an affidavit of service, sworn by one Fredrick Muema Kilonzo on 12th August, 2024, indicating that Notice of Summons and the suit documents filed herein were duly served on the Respondent on the aforesaid date. The Respondent is not shown to have either entered appearance or filed response to the claim.
2. When the suit herein came up for mention before me for the first time on 13th December, 2024, there was no appearance on the part of both parties, and the Court fixed the matter for pre-trial directions on 13th February, 2025. The Court's Deputy Registrar was ordered to serve notices. There was no appearance on 13th February, 2025, and the Court directed the Deputy Registrar to issue and to serve a Notice to Show Cause why the suit herein could not be dismissed for want of prosecution.
3. The Court's record shows that a Notice to Show Cause was issued on 14th February, 2025, and that the same was duly served on the Claimant on the even date. There is on record an affidavit of service sworn by Valentine Kaiga, a Court Process Server, on 17th February, 2025.
4. Vide an affidavit sworn by the Claimant's General Secretary, Wycliffe Nyamwata, on 21st February, 2025 in response to the Notice to Show Cause, the Claimant depones that it is still interested in the suit herein, and pleads for a chance to prosecute the same. It is further deponed that the Respondent has failed to enter appearance despite several invites to take pre-trial directions.



5. Rule 43 of the Employment and Labour Relations Court (Procedure) Rules 2024 provides 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) 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.”

6. Failure by a Respondent to either enter appearance or file defence; or to honour notices to attend Court for taking of pre-trial directions, is not an excuse for a Claimant not to move the Court towards prosecution of a suit.

7. Rule 31(1) of the Employment and Labour Relations Court (Procedure) Rules 2024 provides as follows:-

- “(1) Where a respondent has failed to enter appearance or file defence, the Claimant may apply to the Court for directions that the matter proceeds to formal proof as an undefended suit.”

8. The Claimant is not shown to have moved the Court to proceed with hearing of the suit by way of formal proof, and has not given any good reason as to why this has so far not been done. This notwithstanding, however, I will exercise the Court’s discretion in favour of the Claimant, in the interest of Justice. I proceed to make the following Orders:-

- a. The Claimant shall prosecute the suit herein within twelve (12) months from the date of this Ruling, failing which the suit shall stand dismissed for want of prosecution.
- b. The matter shall be mentioned in Court on 10th July, 2025 for fixing of a formal proof date.

9. It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 16TH DAY OF MAY 2025

AGNES KITIKU NZEI

JUDGE

ORDER

This Ruling has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of the applicable Court fees.

AGNES KITIKU NZEI

JUDGE

Appearance:



Mr. Araka for the Claimant

No appearance for the Respondent

