



REPUBLIC OF KENYA



KENYA LAW
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**Asuma v ARM Cement Limited (Under Liquidation) (Cause
2295 of 2014) [2025] KEELRC 1782 (KLR) (19 June 2025) (Ruling)**

Neutral citation: [2025] KEELRC 1782 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 2295 OF 2014
CN BAARI, J
JUNE 19, 2025**

BETWEEN

PATRICK ASUMA CLAIMANT

AND

ARM CEMENT LIMITED (UNDER LIQUIDATION) RESPONDENT

RULING

1. Before Court is a Notice of Motion application dated 7th October, 2024, brought pursuant to Order 17 Rule 2 (3) and Order 51, Rule 1 and 3 of the Civil Procedure Rules and Section 3A of the Civil Procedure Act. The Applicant seeks orders THAT: -
 - i. This Honourable Court be pleased to dismiss the suit herein for want of prosecution.
 - ii. This Honourable Court be pleased to award the costs of this application to the Respondent/Applicant.
2. The Motion is supported by grounds on the face thereof, and the supporting and further affidavits of Mutiso Steve Kimathi. The Applicant argues that the Claimant/Respondent filed the suit herein, in the year 2014, and that judgment was subsequently entered against the Respondent/Applicant in the sum of Kshs.48,000/-.
3. It avers that it was made aware of the suit in 2021 through service of warrants of attachment in execution of the decree for the sum of Kshs.197,974. It states that it filed an application dated 25th May,2021 seeking stay of execution of the judgment pending compliance by the Claimant/Respondent with the Insolvency Act, the Applicant having been placed under insolvency.
4. The Applicant states that the Claimant was directed to seek consent to prosecute the suit back in 2019 on the premise that Section 60 of the Insolvency Act places a moratorium on parties proceeding with suits.



5. It states further, that it has been 1 year and 8 months since the ruling was delivered and the Claimant/ Respondent has not taken any action to progress the suit. It avers that there is no evidence that the administrators declined to grant them consent.
6. The Applicant prays that the suit be dismissed for want of prosecution.
7. The Claimant/Respondent opposed the Motion vide a Replying affidavit sworn by Patrick Asuma on 10th January, 2025, wherein he states that judgment earlier entered in his favour was set aside since the Applicant was placed under administration, hence he could not continue with the suit without the permission from administrators.
8. The Claimant/Respondent avers that the administrators are yet to grant him consent to continue with the suit.
9. He states that now the Administrator's advocates have instructions to pursue this matter, and by conduct, they are willing to pursue this matter, which in its own can be termed as consent, and pray that the court grants that leave and list the matter for the formal hearing of the claim.
10. The Claimant avers that he is still interested and fully committed to proceeding with this suit until completion, and that his attendance in all the proceedings from filling of the suit and attending all the hearings until judgment was delivered illustrates his willingness to pursue this matter until completion.
11. He contends that waiting for the Applicant to be discharged from the administration to normal business caused the delay in progressing this suit, and that it is in the interest of justice that this matter to be heard on its merit.
12. Parties urged the Motion by oral submissions on 12th May, 2025 reiterating their pleadings.

Determination

13. The issue for determination is whether the application has merit.
14. Rule 43(3) of the Employment and Labour Relations Court (Procedure) Rules 2024, allows a party to apply for dismissal of a suit for want of prosecution where no action has been taken within one year.
15. The Claimant/Respondent does not at all dispute that the Court ordered that he seeks consent to prosecute the suit herein on the premise that the Applicant had been placed under liquidation.
16. It is also not disputed that since the said order was made back in 2021, the Claimant/Respondent has to date not sought the said consent. I note that he on one hand contends that the administrators have not given him consent, while on the other hand, he admits that he is yet to seek the consent, and was instead waiting for the Applicant to be discharged from the liquidation so as to progress the case.
17. I note that this matter was filed in the year 2014. In the case of *Ivita v Kyumba* [1984] KLR 441 the Court held thus on dismissal of suits for want of prosecution: -

“The test applied by the courts in the application for dismissal of a suit for want of prosecution is whether the delay is prolonged and inexcusable, and if it is, whether justice can be done despite the delay. Thus, even if the delay is prolonged, if the court is satisfied with the plaintiff's excuse for the delay, and that justice can still be done to the parties, the action will not be dismissed, but it will be ordered that it be set down for hearing at the earliest time. It is a matter of and in the discretion of the court.”



18. In my view, the delay by the Claimant/Respondent in progressing this suit is inexcusable as no explanation has been given for the delay of one year and eight months in seeking the consent to prosecute the suit. Further, no evidence has been led to show that such an application was ever made and the consent was denied, or that the same is pending hearing and determination.
19. This Court therefore, finds no reason to continue keeping this suit as the same is only clogging the court, while it is evident that the Claimant long lost interest in the same.
20. In the premise, I find the Applicant's motion merited, and I proceed to dismiss the Claimant's Memorandum of Claim dated 13th November, 2014 for want of prosecution.
21. I make no orders on costs.
22. Orders accordingly.

SIGNED, DATED AND DELIVERED AT NAIROBI THIS 19TH DAY OF JUNE, 2025.

C. N. BAARI

JUDGE.

Appearance:

Ms. Njeri h/b for Mr. Odhiambo for the Claimant/Respondent

Mr. Kisala h/b for Mr. Kimathi for the Respondent/Applicant

Ms. Esther S - Court Assistant

