



**Owino v Postal Corporation of Kenya (Cause 2148 of 2017)
[2025] KEELRC 2239 (KLR) (25 July 2025) (Ruling)**

Neutral citation: [2025] KEELRC 2239 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 2148 OF 2017**

**AK NZEI, J
JULY 25, 2025**

BETWEEN

WILFRED WASONGA OWINO CLAIMANT

AND

POSTAL CORPORATION OF KENYA RESPONDENT

RULING

Background

1. The suit herein is shown to have been filed in this Court on 27th October, 2017 vide a Statement of Claim dated 11th October, 2017. The Respondent entered appearance on 16th November, 2017, and is shown to have filed witness statements and a list and bundle of documents on 17th July, 2018. The suit is shown to have been mentioned in Court on 5th March, 2018 and 26th June, 2018 respectively. A date for hearing is shown to have been fixed, being 8th May, 2019. No proceedings are shown to have been taken on the said date. No action is shown to have been taken on the suit thereafter.
2. The Court's record shows that on 22nd October, 2021, over 2 years later, the Court's Deputy Registrar issued a Notice to show cause under Rule 16 of the Employment and Labour Relations Court (Procedure) Rules 2016 to the parties herein, calling upon them to attend Court on 11th November, 2021 and show cause why the suit could not be dismissed for want of prosecution. There is an affidavit of service on record by one Samuel Kinanga Anyoka, sworn on 5th November, 2021, indicating that the Notice to Show Cause was on the aforesaid date (5th November, 2021) served on Counsel for both parties herein by email. On 24th November, 2021, however, there was no Court attendance on the part of both parties. The Court (Hon. Gakeri, J), deferred the Notice to Show Cause to 24th January, 2022, and directed that the Notice be served on the parties. There is, on record, evidence of service of a notice on the Claimant's Advocates on record by the Court on 11th November, 2021 at 11:12:27 via email address advocates@ochiengogutu.com. This email address appears on the Claimant Advocates'



correspondence/letters to the Court. I have in particular noted the said email address on the said Advocates' letters to the Court dated 18th July, 2018 and 8th August, 2018 respectively. The said notice dated 11th November, 2021 states as follows:-

“The above matter is scheduled for notice to show cause why the suit should not be dismissed for want of prosecution on 24th January, 2022.

Regards.

Employment and Labour Relations Court.”

3. The Court's record further shows that when the matter came up for Notice to Show Cause on 24th January, 2022, only the Respondent's Advocate attended Court, and that he asked the Court to dismiss the suit for want of prosecution as “the Claimant had not shown any indication that he was desirous to prosecute the suit.” The Court made the following Order:-

“The Notice to show cause was deferred on 11th November when none of the parties appeared in Court. The Claimant is not in Court today nor has he filed a Replying Affidavit to show interest in the case. The parties were last in Court on 14th December, 2018. Case dismissed for want of prosecution with no orders as to costs.”

4. The Claimant is not shown to have taken any step towards moving the Court to set aside the dismissal order until 6th December, 2024 when the Notice of Motion dated 5th December, 2024 was filed. This was over two (2) years and ten (10) months from the date of the aforesaid dismissal order. What was the Claimant doing during that lengthy period of time?

The Notice of Motion dated 5th December, 2024.

5. The application is expressed to be brought under Order 12 Rule 7 of the Civil Procedure Rules 2010 and Sections 1A, 1B and 3A of the [Civil Procedure Act](#). The Claimant seeks the following orders:-
 - a. That the Court be pleased to set aside the Orders made on 24th January, 2022 dismissing the suit for want of prosecution and reinstate the suit for hearing on the merits.
 - b. That costs of the application be provided for.
6. The application sets out on its face the grounds on which it is based, and is anchored on the supporting affidavit of A.P. Ochieng Advocate sworn on 5th December, 2024. It is deponed in the said supporting affidavit:-
 - a. that on 11th November, 2021, the Court directed that a Notice to show cause be issued to the Claimant's Counsel, but service was not done.
 - b. that the Claimant's Counsel requested for a hearing on 28th April, 2022 and 15th March, 2023, and that it was only on perusal of the Court file that they discovered that the matter had been listed on 24th January, 2022 and marked as closed.
 - c. that the Applicant shall suffer substantial prejudice if the suit is not reinstated and determined on its merits; as the suit involves a claim for unfair termination and the Claimant has a valid claim.



7. The application is opposed by the Respondent vide a replying affidavit sworn by Justus Omwenga Advocate on 24th February, 2025. It is deponed in the said affidavit:-
- a. that no valid grounds have been raised on the application to warrant reinstatement of the suit herein.
 - b. that the suit was scheduled for hearing on 8th May, 2019 when hearing did not take place as the Court was not sitting.
 - c. that thereafter, no step was taken towards prosecution of the suit, for a period exceeding one year, prompting issuance by the Court of a Notice to show cause on 11th November, 2021, which notice was issued in accordance with the law, and was accessible via the CTS.
 - d. that the Claimant/Applicant did not attend Court on 24th January, 2022 when he was required to show cause; and the suit was consequently dismissed.
 - e. that delay in instituting the application herein is inexcusable, the suit having been dismissed on 24th January, 2022, and that the application dated 5th December, 2024 should be dismissed in the interest of Justice.
8. The Claimant's suit herein was dismissed on 24th January, 2022 pursuant to Rule 16 of the Employment and Labour Relations Court (Procedure) Rules 2016 (now repealed) which provided as follows:-
- “(1) In any suit in which no application has been made in accordance with Rule 15 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 paragraph (1).
 - (4) The Court may dismiss the suit for non-compliance with any direction given under this rule.”
9. As already stated in this Ruling, no proceedings are shown to have been taken on 8th May, 2019, a date shown to have been fixed for hearing of the suit. It is stated in the replying affidavit filed herein on behalf of the Respondent that the Court did not sit on that date. Thereafter, and for a period of almost 3 years, no action was taken by the Claimant towards prosecution of the suit. This lengthy period of apparent indolence on the part of the Claimant has not been explained by the Claimant. The Claimant has also not explained the almost 3 years' delay in filing the present application seeking reinstatement of the dismissed suit. I have curiously noted that even the affidavit filed in support of the application before the Court is sworn by the Claimant's Advocate. Where is the Claimant?
10. The notice to show cause issued by the Court on 22nd October, 2021 is shown to have been served on Counsel for both parties, and twice the suit was fixed for parties to show cause; with appropriate notice shown to have been served via email. There are affidavits of service on record as already stated in this



Ruling. The allegations of non-service of the Notice to Show Cause on the Claimant made herein on behalf of the Claimant are devoid of basis, in view of the foregoing.

11. I find no merit in the Claimant's Notice of Motion dated 20th December, 2024, and the same is hereby dismissed with no order as to costs.

12. The Court's record shows that the matter was closed on 25th March, 2022. It shall remain so closed.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 25TH DAY OF JULY 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. Ogutu for the Applicant/Claimant

Mr. Omagwa for the Respondent

