



**Karangi v Riftvalley Railways (K) Limited (Cause 601 of 2015)  
[2024] KEELRC 283 (KLR) (15 February 2024) (Ruling)**

Neutral citation: [2024] KEELRC 283 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA  
CAUSE 601 OF 2015  
AK NZEI, J  
FEBRUARY 15, 2024**

**BETWEEN  
RICHARD MWWANYALO KARANGI ..... CLAIMANT  
AND  
RIFTVALLEY RAILWAYS [K] LIMITED ..... RESPONDENT**

**RULING**

1. The suit herein was instituted by the Claimant on 13/8/2015 vide a memorandum of claim dated 30/7/2015. The Respondent entered appearance on 15/10/2015 and filed a statement of response on 14/6/2016. The Court's record shows that when the suit came up for hearing on 25/9/2017 before Rika, J, Counsel for both parties informed the Court that they had agreed that the Claimant herein would testify on behalf of all the other Claimants in file Nos. 590-601 of 2015. The Court ordered that hearing would go on under the cause herein (No. 601 of 2015). The Claimant testified on the aforesaid date, and was cross-examined. The Claimant's case herein, and in the aforesaid other respective cases, was closed.
2. There was no appearance on the part of both parties on 12/2/2018 when the suit came up for defence hearing, and the matter was stood over generally, a scenario that repeated itself on 12/6/2018 when the suit came up for mention.
3. For a record period of 3 years and almost 9 months, no action was taken on the suit herein. On 14/3/2022, this Court's Deputy Registrar issued a written notice to both parties under Rule 16 of the *Employment and Labour Relations Court (procedure) Rules* 2016, calling upon them to attend Court on 31/3/2022 and show cause why the suit could not be dismissed for want of prosecution. None of the parties attended Court on 31/3/2022 as notified, and the suit was dismissed by this Court for want of prosecution.



4. On 13/10/2023, over one (1) year and 5 months from the date of dismissal of the suit, the Claimant filed an evenly dated Notice of Motion seeking the following orders:-
  - a. that this Court be pleased to review and to set aside the orders and proceedings taken herein on 31/3/2022 and to reinstate the suit herein.
  - b. that the orders to be issued herein do apply to ELRC Cause Nos 590-600, all of 2015.
  - c. that costs of the application be in the cause.
5. The application is expressed to be brought under Rules 16 and 28 of the Employment and Labour Relations Court (procedure) Rules 2016, Order 12 Rule 7 of the *Civil procedure Rules* and Sections 1A, 1B and 3A of the *Civil Procedure Act*; and is the application that is before me for determination. The application is based on the Claimant/Applicant's supporting affidavit sworn 13/10/2023. It is stated to in the said affidavit:-
  - a. that the suit herein was selected as a test suit, and the Claimant testified and closed his suit on 27/9/2017.
  - b. that hearing of the suit could not proceed subsequently as the Respondent had ceased operations in the Country as it had ceded management of its offices back to Kenya Railways Corporation, from which it had taken over.
  - c. that on 19/9/2019, the Claimant's Advocates filed an application (seeking) to substitute the Respondent with Kenya Railways Corporation, but the application did not see the light of the day as shortly thereafter, Corona pandemic threw every thing into disarray; and that the Claimant was unable to contact his Advocates until August 2023, as their offices were closed most of the time.
  - d. that neither the Claimant nor his colleagues were in a position to know that the matters were slated for dismissal as they had no notice of what was going on, and that there is no evidence that they were notified of the intention to dismiss the suit.
6. The written notice referred to in paragraph 3 of this Ruling is shown to have been physically served on the Claimant's Advocates then on record, Oduor Simiyu & Co. Advocates, on 23/3/2022. There is on record a duly served and endorse/stamped, signed, and dated copy of the notice. The Claimant/Applicant's allegations that he was unable to contact his said Advocates prior to August 2023 as they were closed most of the time cannot be true. Cases belong to parties, not to Advocates; and a litigant is obligated to be in constant touch with his or her Advocates for purposes of being briefed on the status of his/her case and for purposes of giving appropriate instructions on any arising issue where and when necessary.
7. It is anathema for a litigant to go to sleep over his or her case for years, only waking up long after their case is dismissed for want of prosecution, and starting to make allegations that are contrary to obvious facts regarding his case.
8. At this time and age when communication technology has advanced by leaps and bounds, it would be expected that some form of communication between the Claimant and the Advocate acting for him between June 2018 and March 2022 took place, if at all the Claimant/Applicant was interested in having his case heard and finalized. The Claimant has not demonstrated having communicated with his Advocates by phone, email or even by letters send to the Advocates' last known postal address.



9. It is worthy noting that the present application was filed over 1 year and 6 months (over 18 months) from the date of dismissal of the Claimant's suit for want of prosecution. This inordinate delay has not been explained to the Court's satisfaction. There was clearly a good measure of indolence on the part of the Claimant/Applicant. Where equity is transgressed, the Court's discretion cannot be exercised in favour of the transgressor. It is trite that a Court's discretion must always be exercised judiciously.
10. The Claimant/Applicant has invoked the provisions of both the civil Procedure Rules/Act and this Court's Rules. Except in cases where this Court's Rules are silent on any particular procedural issue, or where provisions of this Court's Rules or an Act of Parliament save particular provisions of the Civil Procedure Rules into this Court's Rules, the Rules of procedure applicable in proceedings before this Court, being a specialized Court, are the Employment and Labour Relations Court (Procedure) Rules, 2016.
11. In the application before me, the Claimant seeks review and setting aside of this Court's order dated 31/3/2022 dismissing the suit herein for want of prosecution.
12. Rule 33(1) of the Employment and Labour Relations Court (Procedure) Rules, 2016 provides as follows:-
- “ 33.
- (1) A person who is aggrieved by a decree or an order from which an appeal is allowed but from which no appeal is preferred or from which no appeal is allowed, may within reasonable time, apply for a review of the judgment or ruling—
- (a) if there is discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the knowledge of that person or could not be produced by that person at the time when the decree was passed or the order made;
- (b) on account of some mistake or error apparent on the face of the record;
- (c) if the judgment or ruling requires clarification; or
- (d) for any other sufficient reason.”
13. The Claimant has not demonstrated discovery of a new and important matter or the existence of an error or mistake that is apparent on the face of the record in this Court's Order dated 31/3/2022. He has also not demonstrated that the said order requires clarification. No other sufficient reason has been demonstrated to warrant a review of this Court's said order.
14. It is worthy noting that the Claimant/Applicant has not said anything in his application regarding the current status of Cause Nos. 590 of 2015 to 600 of 2015. Could those causes have separately met their end in the manner and under the circumstances as the suit herein did? A court of law cannot be called upon to make orders that may end up being in vain. This position does not, however, affect the fact that the dismissal order dated 31/3/2022 affected the aforesaid suits, as well, in view of the Court's order made on 25/9/2017 to the effect that trial would proceed in the suit herein.
15. In sum, and having considered submissions filed on behalf of the Claimant/Applicant, I find no merit in the Notice of Motion dated 13/10/2023. The same is hereby dismissed with costs.



16. The Court file herein is hereby ordered closed.

**DATED, SIGNED AND DELIVERED AT MOMBASA THIS 15<sup>TH</sup> FEBRUARY 2024**

**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:

.....Applicant

.....Respondent

