



**Mjomba & others v Attorney General & 3 others (Petition
8 of 2016) [2024] KEELRC 1483 (KLR) (20 March 2024) (Ruling)**

Neutral citation: [2024] KEELRC 1483 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
PETITION 8 OF 2016
M MBARÚ, J
MARCH 20, 2024**

BETWEEN

ESAU KIORI MJOMBA & OTHERS PETITIONER

AND

THE HON ATTORNEY GENERAL 1ST RESPONDENT

THE DEFENCE COUNCIL 2ND RESPONDENT

COMMISSIONER OF PRISONS 3RD RESPONDENT

THE PUBLIC SERVICE COMMISSION 4TH RESPONDENT

RULING

1. On 26 February 2024, the court invited parties to attend for the petitioners to show cause why the petition should not be dismissed for want of prosecution.
2. The petition's advocate submitted that the petitioners filed a Notice of Change of Advocate on 21 September 2023. The court allowed the petitioners to file an Amended Petitioner and to serve. The Amended Petition and Supporting Affidavit dated 24 October 2023 and all the respondents were served. The petitioners were ready for hearing but the respondents objected to the grounds that they had not been served.
3. The petitioners informed the court that the Supporting Affidavits that were being relied upon had been prepared by the previous advocates for the petitioners. At the time of taking over the matter, only the Amended Petition was served.
4. On the notice to show cause why the petition should not be dismissed for want of prosecution, the petitioners have been ready to proceed with the hearing. The court should be guided by the overriding objective to hear the parties and meet the ends of justice and the petitioners should be ready to abide by the court directions. In the case of Naftali Opondo v National Bank of Kenya Limited [2005] eKLR



the court held that in deciding whether or not to dismiss a suit, the court should be slow to take such drastic action.

5. The State Counsel for the 4th respondent submitted that the petition should be dismissed for want of prosecution as confirmed in the entire record of this matter from 1st November 2022 the petitioners have not been ready for a hearing. The court allowed the petitioners to amend the petition consolidating Petitions No. 8 and 10 of 2021. The amendments served upon the respondents were not proper amendments. The court noted as much and gave specific directions to the petitioners. That was to file an Amended Petition which has not been done.
6. The Supporting Affidavit was filed on 26 February 2024 by Mwajuma Mwanahaki and Dennis Ngala together with the letter of authority to Act. deceased persons seem to have been given the authority to act. Michael Kamiles Kigunde in High Court Petition No. 182 of 2019 was indicated by the advocate attending that he is deceased and therefore he did not testify. In this case, Michael Kigunde is indicated to have been given authority to act. a deceased person cannot give such authority.
7. The respondents submitted that for the last two and a half years, the court has allowed the petitioners time to comply. There is an element of fraud where deceased persons are introduced to have given authority in these proceedings.
8. Two other petitioners have filed Notices to Withdraw their petitions. These are the same parties before the High Court in Petition No.182 of 2019 – Wilson Siri is the petitioner.
9. The petitioners in this case are not serious about prosecuting this petition and only fair that the same be dismissed.
10. Counsel for the 3rd and holding brief for the 2nd respondent’s advocates submitted that the petitioner was granted leave to amend the petition on 1st November 2021 and the petitions consolidated. The Notice of Change of Advocates was filed on 1st September 2023 meaning by the time the matter came up in court for hearing on 25 September 2023, they ought to have filed and served the amendments. When the matter came up for hearing on 3 October 2023, the petitioners were not in court. The petitioners were given 21 more days to amend the petition. By 28 October 2023, they had not complied and an additional 7 days were given.
11. Counsel submitted that on 22 January 2024 when the matter came up for hearing, the petitioners admitted that the 3rd respondent had not been served with the amendments filed. For these reasons, the hearing was adjourned to 13 February 2024.
12. The petitioners have not filed any Affidavit with regard to the show cause notice to prove that indeed there exists good cause why the petition should not be served. Without undertaking such a process, the court is justified in dismissing the petition for want of prosecution.
13. The Notice to Show Cause why this petition should not be dismissed was initiated by the court under its powers under Sections 3 and 20 of the *Employment and Labour Relations Court Act*, 2011 read together with Rule 16 of the Employment and Labour Relations Court (Procedure) Rules, 2016. Where a party fails to take court directions and fails to prosecute its case, the court is allowed to invite for a show cause why such a suit should not be dismissed.
14. It is not contested that since 1st November 2021, the court directed the petitioners to proceed and amend the petition taking into account that the petitioners moved the court way back in the year 2016, the petition involves several petitioners and as noted by the State Counsel for the 4th respondent, there are other ending suits before the High Court and some petitioners have been noted as deceased. Why then would the attending advocate fail to address, amend the petition, and serve all the respondents?



Are the petitioners noted in the petition still interested in this petition since the year 2016? Are the petitioners available for a hearing of their petition?

15. Whereas the petitioners have filed an Amended Petition dated 24 October 2023, there is no Supporting Affidavit.
16. The court takes it that the petitioners moved the court for good cause. Seeking justice. They should not be locked out of court but they must not be stalled for whatever reasons. Several hearing dates have been allocated and the hearing failed to take off for one reason or the other due to lapse by the petitioners failing to serve one document or the other.
17. This written ruling has become necessary for the court to address and allow the petitioners to appreciate the full implications of the lapses. The time gone by all parties cannot be overstated.
18. For the ends of justice to be achieved, the court will hear the petitioner but on the following directions;
 - a) The petitioners are given the next 7 days to file a complete single bundle of all pleadings filed on their part and to serve the respondent; this is to be done on or before 27 March 2024;
 - b) Upon service, the respondents will have 7 days right of response where this is found necessary, on or before 8 April 2024;
 - c) The court will require the attendance of all the listed 41 petitioners in open court on 9 April 2024 when hearing directions shall be issued;
 - d) On the lapse to address (a) above, the petition will stand dismissed and the requirements under (b) and (c) above removed save for mention on 9 April 2024 to close the file.

DELIVERED IN OPEN COURT AT MOMBASA THIS 20 DAY OF MARCH 2024.

M. MBARŪ

JUDGE

In the presence of:

Court Assistant: Japhet

..... and

