



**Kaguongo v Co-operative Bank of Kenya Limited (Cause
1452 of 2018) [2024] KEELRC 664 (KLR) (15 March 2024) (Ruling)**

Neutral citation: [2024] KEELRC 664 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1452 OF 2018**

J RIKA, J

MARCH 15, 2024

BETWEEN

PATRICK KAGUONGO CLAIMANT

AND

CO-OPERATIVE BANK OF KENYA LIMITED RESPONDENT

RULING

1. The Respondent filed an Application dated 2nd August 2023, seeking dismissal of the Claim, for want of prosecution.
2. The Respondent invokes the *Civil Procedure Act* and *Rules*, which do not govern procedure on dismissal for want of prosecution, of employment Claims filed before this Court.
3. The relevant procedure is under Rule 16 of the *E&LRC [Procedure] Rules*, 2016, which states: -
 - (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.
4. The Respondent's Application is supported by the Affidavit of Florence Njuguna, Legal Officer, sworn on 2nd August 2023.



5. She explains that the Claim was filed on 16th November 2018. The Respondent filed its Statement of Response, on 4th December 2018. The Parties attended Court on 10th July 2019 for pre-trial conferencing, when the Claim was certified ready for hearing.
6. Since then, the Claimant has not taken any steps to prosecute the Claim.
7. The Claimant relies on the Affidavit of his Advocate Judith Kubai, sworn on 1st November 2023.
8. She states that after the pre-trial conference, she wrote several letters to the Court Registry, seeking a hearing date, but none was availed.
9. She exhibits only two such letters, one dated 16th September 2022 and the other 3rd February 2023.

The Court Finds: -

10. There is not a single letter by the Claimant, seeking mention or hearing date, between 10th July 2019 and 16th September 2022, a period of 3 years. Even when the Claimant wrote to the Court on the 2 occasions, asking for a hearing date, the record does not show that the Claimant attended Court Registry and was denied a hearing slot.
11. Rather than make an attempt at explaining his inaction, the Claimant, through his Advocate, makes the bold statement that the Respondent was not prevented from moving the Court, to set the Claim down for hearing.
12. It is not in consonance with the principles of fair administration of justice, and fair hearing, for a party to bring another before the Court, and expect that other party, to take steps in prosecution of the Claim, while the Claimant slumbers. The Claim always, belongs to the Claimant. It is the Claimant who instituted the Claim, and bears the responsibility of conducting the proceedings against the Respondent, to completion. It cannot have been intended by the law, that the Respondent is the one to pursue the Claim filed against it, to conclusion. The Respondent had no obligation to fix the Claim for hearing, while the Claimant slept. Indeed, the Respondent could slumber, do nothing after responding to the Claim, without the same consequence, as when the Claimant slumbers. The Claim belongs to the Claimant.
13. His submission that the Respondent was not prevented from fixing the Claim for hearing, in explaining his own inertia, is way out of order.
14. Once the Court certified the Claim as ripe for hearing, the Claimant ought to have taken active steps within 1 year, to prosecute. He did not comply with the directions of the Court, and dismissal for want of prosecution, is warranted.
15. 3 years of unexplained inaction, is well beyond the maximum period of 1 year of inaction, deemed as permissible by the law.
16. From the date of filing to-date, is a period of 6 years. Out of this, 3 years were spent by the Claimant in slumber.
17. The Court is satisfied that the Claimant has failed to prosecute his Claim. There is no reasonable cause shown for the delay. There is not a single reason, even a weak reason, advanced by the Claimant, to justify delay. Instead, the Claimant holds that it was the responsibility of the Respondent to fix the Claim he filed, for hearing. The submissions made by the Claimant give the Court nothing it could hang onto, in justifying further retention of the Claim in its docket. This Claim cannot be rescued.

It is ordered: -



- a. The Claim is dismissed for want of prosecution.
- b. Costs to the Respondent.

DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY AT NAIROBI, UNDER PRACTICE DIRECTION 6[2] OF THE ELECTRONIC CASE MANAGEMENT PRACTICE DIRECTIONS, 2020, THIS 15TH DAY OF MARCH 2024.

James Rika

Judge

