



**Leshishi v Kenya Bankers Savings and Credit Cooperative Society Limited
(Cause E386 of 2021) [2024] KEELRC 585 (KLR) (15 March 2024) (Ruling)**

Neutral citation: [2024] KEELRC 585 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E386 OF 2021
J RIKA, J
MARCH 15, 2024**

BETWEEN

SOKOIPEI OLE LESHISHI CLAIMANT

AND

**KENYA BANKERS SAVINGS AND CREDIT COOPERATIVE SOCIETY
LIMITED RESPONDENT**

RULING

1. The Respondent filed an Application dated 24th August 2023, seeking an order dismissing the Claim for want of prosecution.
2. The Application is made under the Civil Procedure Act and Rules, which do not regulate dismissal for want of prosecution, in employment Claims filed in this Court.
3. The applicable procedure is under Rule 16 of the ECJLRC [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 1 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 record indicates that the Claim was filed on 12th May 2021. Within 1 year, several actions have been taken by the Claimant and/or the Respondent, within the meaning of Rule 16 [1] above.



5. The Respondent was served with the Claim and entered appearance through the Memorandum of Appearance dated 31st May 2021; the Respondent filed Statement of Response and Counterclaim, dated 22nd July 2021; and parties subsequently undertook steps, to meet the pre-trial requirements.
6. On 6th September 2021, they appeared before the Deputy Registrar for pre-trial conferencing, as contemplated under Rule 15.
7. There are on record, letters written by both Advocates between July 2021 and 24th August 2023, seeking mention or hearing dates, from the Court. In April 2023, the Claimant wrote to the Court seeking a mention date. On 13th August 2023 and 24th August 2023, the Claimant's Advocate Robert Koome, wrote to the Court, requesting for a hearing date. The Claimant filed a further list of documents, dated 5th June 2022.
8. The record of the Court shows that the Claim was mentioned on 15th February 2022, 9th March 2022, 6th April 2022, 18th July 2022, 22nd September 2022, 4th November 2022, and 21st March 2023.
9. There have been plenty of pre-trial activities going on, and the Claimant cannot be accused of filing his Claim, and going into a prolonged slumber thereafter, warranting dismissal of his Claim for want of prosecution, under Rule 16 of the *E&LRC [Procedure] Rules, 2016*.

It is ordered: -

- a. The Application filed by the Respondent dated 24th August 2023 is declined.
- b. The Registry to assign the Parties a hearing date, as soon as practicable.
- c. Costs in the cause.

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

