



**Samuel v Camusat Kenya Limited (Cause 598 of 2019)  
[2024] KEELRC 890 (KLR) (24 April 2024) (Ruling)**

Neutral citation: [2024] KEELRC 890 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 598 OF 2019  
L NDOLO, J  
APRIL 24, 2024**

**BETWEEN**

**SAM LAURENT-SAMUEL ..... CLAIMANT**

**AND**

**CAMUSAT KENYA LIMITED ..... RESPONDENT**

**RULING**

1. By its Notice of Motion dated 28<sup>th</sup> November 2023, the Respondent seeks dismissal of the Claimant's claim for want of prosecution.
2. The Motion is based on the ground that the Claimant has neglected and/or otherwise failed to set down the suit for hearing.
3. In his affidavit in support of the Motion, Counsel for the Respondent, Simon Wekesa, depones that since 2019, when the Respondent filed a Response to the claim, the Claimant has not taken any steps to set down the matter for hearing.
4. Counsel states that the neglect and/or failure by the Claimant to set down the matter for hearing amounts to an abuse of the court process.
5. The Claimant did not respond to the Motion, despite due notification.
6. Perusal of the court record indicates that since 2019, the matter came up severally, but there was no attempt by the Claimant to set it down for hearing. The last time the matter came up for mention was 19<sup>th</sup> June 2020, when both parties were absent and it was stood over generally.
7. Subsequently, the Court listed the matter for further mention on 15<sup>th</sup> November 2023 but only the Respondent appeared. At that appearance, the Respondent's Counsel informed the Court that he would be filing an application to have the matter dismissed for want of prosecution. The application was duly filed, hence this ruling.



8. Rule 16(1) of the Employment and Labour Relations Court Procedure Rules provides as follows:

16.(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.

9. The principles to be taken into account in issuing an order for dismissal of a suit for want of prosecution were established in *Ivita v Kyumbu* [1984] eKLR 441 as follows:

“The test is whether the delay is prolonged and inexcusable, and, if it is, can justice be done despite such delay? Justice is justice to both the Plaintiff and Defendant; so both parties to the suit must be considered and the position of the judge too, because it is no easy task for the documents, and, or witnesses may be missing and evidence is weak due to the disappearance of human memory resulting from lapse of time. The Defendant must however satisfy the court that it will be prejudiced by the delay...He must show that justice will not be done in the case due to the prolonged delay on the part of the Plaintiff before the court will exercise discretion in his favour and dismiss the action for want of prosecution. Thus, even if delay is prolonged, if the court is satisfied with the Plaintiff’s excuse for the delay, the action will not be dismissed, but it will be ordered that it be set down for hearing at the earliest available time.”

10. The present case has remained unprosecuted for close to five (5) years and the Claimant has not offered any explanation for the lapse.

11. The only thing to do in the circumstances, is to dismiss the claim for want of prosecution, which I hereby do.

12. Each party will bear their own costs.

13. Orders accordingly.

**DELIVERED VIRTUALLY AT NAIROBI THIS 24<sup>TH</sup> DAY APRIL 2024**

**LINNET NDOLO**

**JUDGE**

Appearance:

No appearance for the Claimant

Mr. Wekesa for the Respondent

