



**Kumanda v Metro Consultants & Guardian Limited (Cause  
985 of 2018) [2024] KEELRC 1455 (KLR) (14 June 2024) (Ruling)**

Neutral citation: [2024] KEELRC 1455 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 985 OF 2018**

**J RIKA, J  
JUNE 14, 2024**

**BETWEEN**

**PHILLIP MUNYITHIA KUMANDA ..... CLAIMANT**

**AND**

**METRO CONSULTANTS & GUARDIAN LIMITED ..... RESPONDENT**

**RULING**

1. This Claim was dismissed for want of prosecution on 16<sup>th</sup> November 2023, upon an application filed by the Respondent, dated 20<sup>th</sup> June 2023.
2. The Court was persuaded by the submission made by the Respondent that, the Claim was filed on 18<sup>th</sup> June 2018; the Statement of Response was filed on 11<sup>th</sup> July 2018; the Reply to the Statement of Response was filed on 26<sup>th</sup> September 2018; and hearing scheduled for 17<sup>th</sup> December 2018.
3. The Claimant was absent on the hearing date, and rather than dismiss the Claim for non-attendance, the Court directed that a fresh hearing date be obtained at the Registry.
4. From then, there was no action taken by the Claimant to prosecute the Claim.
5. The Respondent filed its application dated 20<sup>th</sup> June 2023 for dismissal for want of prosecution.
6. The Claimant was served with the application but again did not attend Court, for hearing of the application, on 16<sup>th</sup> November 2023. The application was allowed in his absence.
7. He has filed an application dated 23<sup>rd</sup> November 2023, seeking setting aside of the orders of dismissal, made on 16<sup>th</sup> November 2023.
8. He argues, through his affidavit sworn on 23<sup>rd</sup> November 2023, that the Court ought to extend substantive justice to him, by reinstating his Claim, and hearing the Parties on merit. He instructed a firm of Advocates to represent him on the eve of the hearing of the application, the 15<sup>th</sup> November



2023. He was not aware that the application was due for hearing on 16<sup>th</sup> November 2023. His Advocates were not aware.

9. The Respondent urges the Court not to revisit the orders of 16<sup>th</sup> November 2023, relying of grounds of opposition, dated 5<sup>th</sup> February 2024. Its position is that the Claimant has not explained why he did not take any steps to prosecute the Claim for 5 years. He was served with the application for dismissal of the Claim for want of prosecution. He did nothing, other than instruct Advocates to act for him, on the eve of the hearing.
10. Parties agreed to argue the application through written submissions, which they confirmed to have filed and exchanged, at the last appearance before the Court, on 28<sup>th</sup> February 2024.

**The Court Finds : -**

11. The Claimant has not explained satisfactorily why he did not prosecute his Claim for 5 years, and why he did not attend Court when the Respondent moved the Court to dismiss the Claim for want of prosecution. The record is replete with instances of the Claimant failing to attend Court, be it on hearing of the Claim, applications or mentions. Even when the Parties were moved by the Court to attend Court, the Claimant kept his distance. He showed no desire at all, to prosecute the Claim. The Respondent is entitled to closure, 6 years after it was hauled before the Court by the Claimant. There is no reason given by the Claimant, to justify re-instatement of the Claim.

**It is ordered:**

- a. The application filed by the Claimant dated 23<sup>rd</sup> November 2023 is declined.
- b. Costs to the Respondent.
- c. The file is closed as ordered on 16<sup>th</sup> November 2023.

**DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY AT NAIROBI, UNDER PRACTICE DIRECTION 6[2] OF THE ELECTRONIC CASE MANAGEMENT PRACTICE DIRECTIONS, 2020, THIS 14<sup>TH</sup> DAY OF JUNE 2024.**

**JAMES RIKA**

**JUDGE**

