



**Kakuthu v Career Directions Limited & another (Cause 68 of 2018)  
[2024] KEELRC 2311 (KLR) (24 September 2024) (Ruling)**

Neutral citation: [2024] KEELRC 2311 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA  
CAUSE 68 OF 2018  
AK NZEI, J  
SEPTEMBER 24, 2024**

**BETWEEN**

**EZEKIEL KAKUTHU ..... CLAIMANT**

**AND**

**CAREER DIRECTIONS LIMITED ..... 1<sup>ST</sup> RESPONDENT**

**BOLLORE AFRICA LOGISTICS GROUP ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. Vide its Ruling delivered on 28<sup>th</sup> April 2022, this Court made the following orders:-
  - (a) The Claimant shall prosecute the suit herein within six months, failing which the suit shall stand dismissed for want of prosecution.
  - (b) Mention for pre-trial directions on 16<sup>th</sup> May 2022.
2. On 16<sup>th</sup> May 2022, the Claimant's Counsel informed the Court that the Claimant had filed all his documents. The 1<sup>st</sup> Respondent was found to have filed only a Memorandum of Appearance. The 2<sup>nd</sup> Respondent had filed all its documents, but its Counsel sought leave to substitute the 1<sup>st</sup> Respondent's witness statement as their initial witness had left employment. The Court made the following orders:-
  - a. The 2<sup>nd</sup> Respondent is granted leave to file and to serve a substituted witness statement within 21 days of today.
  - b. The suit will proceed for hearing as an undefended claim as against the 1<sup>st</sup> Respondent.
  - c. Hearing on 4<sup>th</sup> October 2022.
  - d. Claimant to serve a hearing notice on the 1<sup>st</sup> Respondent.



3. On 30<sup>th</sup> September 2022, however, the 1<sup>st</sup> Respondent filed a Notice of Motion dated 29<sup>th</sup> September 2022 seeking orders, inter alia, that hearing of the suit be adjourned and the Claimant and the 2<sup>nd</sup> Respondent be directed to serve the 1<sup>st</sup> Respondent with their respective pleadings. In view of the said application, hearing did not proceed on 4<sup>th</sup> October 2022. The Court gave the following orders on the said date:-
  - a. Having heard Counsel for the parties, the hearing scheduled for today is hereby adjourned.
  - b. The Claimant shall serve the 1<sup>st</sup> Respondent with all suit documents filed herein within 7 days of today.
  - c. The 1<sup>st</sup> Respondent shall file and serve its pleadings and all other necessary documents within 14 days of service.
  - d. The Claimant and the 2<sup>nd</sup> Respondent may file and serve further documents and/or witness statements within 7 days of service by the 1<sup>st</sup> Respondent.
  - e. The Notice of Motion dated 29<sup>th</sup> September 2022 is hereby determined in the foregoing terms.
  - f. Mention for pre-trial directions on 16<sup>th</sup> November 2022.
4. The 1<sup>st</sup> Respondent did not comply with the foregoing orders within the timeline set by the Court, and was on 16<sup>th</sup> November 2022 granted 14 more days to do so. The Court fixed the suit for hearing on 7<sup>th</sup> March 2023, on which date the Claimant partly testified and was, pursuant to objections raised by the Respondents, ordered to file a further witness statement within seven days of the said date. None of the parties attended Court on the next hearing date, which was 6<sup>th</sup> July 2023. Hearing was subsequently adjourned severally on account of applications made by Counsel appearing for the Respondents.
5. On 4<sup>th</sup> June 2024, Counsel for the Claimant orally moved the Court to extend the time within which the suit ought to have been prosecuted. The Court, however, directed the Claimant to file a formal application as he deemed appropriate. The Claimant filed the Notice of Motion dated 4<sup>th</sup> June 2024 seeking the following orders:-
  - a. That there be a review, setting aside and/or interpretation of the Ruling made herein on the 28<sup>th</sup> April 2022.
  - b. That in the event that the suit is found to have been dismissed upon interpretation of the Ruling, then the same be reinstated and the time for hearing the suit be enlarged.
  - c. Any further or other order which the Court may deem fit to grant.
6. The foregoing is the application before me, and is predicated on the Claimant's supporting affidavit sworn on 4<sup>th</sup> June 2024. The application is opposed by the Respondents vide their respective replying affidavits, both sworn on 14<sup>th</sup> June 2024; and whose contents I have considered.
7. Without belaboring the point in this matter, this Court's order contained in the Ruling delivered on 28<sup>th</sup> April 2022 was time bound and self-executing. The Claimant's suit herein was not prosecuted within the period of six months ordered by this Court, and it therefore stood dismissed upon the lapse of the said period of six months. The Claimant did not seek extension of the time stated in the said order before its lapse.
8. Having noted that delay in prosecuting the suit as ordered was caused by both the claimant and the Respondents, and having considered written submissions filed by Counsel for the parties herein, I allow the Notice of Motion dated 4<sup>th</sup> June 2024 in the following terms:-



- a. The period of six months ordered on 28<sup>th</sup> April 2022 is hereby extended by a further period of seven months from the date of this Ruling, and the claimant's suit herein is hereby reinstated.
- b. All the documents filed herein and proceedings taken outside the said period of six months ordered on 28<sup>th</sup> April 2022 are hereby deemed to have been filed and taken within time.
- c. The suit shall be fixed for hearing and/or further hearing forthwith.
- d. Costs of the application shall be in the cause.

9. Orders accordingly.

**DATED, SIGNED AND DELIVERED AT MOMBASA THIS 24<sup>TH</sup> SEPTEMBER 2024**

**AGNES KITIKU NZEI**

**JUDGE**

**Order**

This Ruling has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of the applicable Court fees.

**AGNES KITIKU NZEI**

**JUDGE**

Appearance:

.....Claimant

.....Respondent

