



**Kenya Council of Employment and Migration Agencies v Attorney-General & 9 others;
State Department for Public Service & 3 others (Interested Parties) (Judicial Review
Application 05 of 2020) [2023] KEELRC 219 (KLR) (31 January 2023) (Ruling)**

Neutral citation: [2023] KEELRC 219 (KLR)

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

JUDICIAL REVIEW APPLICATION 05 OF 2020

J RIKA, J

JANUARY 31, 2023

BETWEEN

**KENYA COUNCIL OF EMPLOYMENT AND MIGRATION
AGENCIES APPLICANT**

AND

ATTORNEY-GENERAL 1ST RESPONDENT

**PRINCIPAL SECRETARY, MINISTRY OF ENVIRONMENT AND
FORESTRY 2ND RESPONDENT**

**NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY BOARD 3RD
RESPONDENT**

**DIRECTOR- GENERAL, NATIONAL ENVIRONMENT MANAGEMENT
AUTHORITY 4TH RESPONDENT**

**PRINCIPAL SECRETARY, MINISTRY OF ENVIRONMENT AND
FORESTRY 5TH RESPONDENT**

LABAN GICHOHI 6TH RESPONDENT

HALIMA WARE 7TH RESPONDENT

AUGUSTINO NETO 8TH RESPONDENT

TERESIA MBAIKA 9TH RESPONDENT

MAMO B MAMO 10TH RESPONDENT

AND

STATE DEPARTMENT FOR PUBLIC SERVICE INTERESTED PARTY

PUBLIC SERVICE COMMISSION INTERESTED PARTY



KENYA SCHOOL OF GOVERNMENT, LOWER KABETE INTERESTED PARTY

ETHICS AND ANTI-CORRUPTION COMMISSION INTERESTED PARTY

RULING

1. The Court issued upon the Parties a Notice to Show Cause why the Judicial Review Application herein, should not be dismissed for want of prosecution, under Rule 16 of the *Employment and Labour Relations Court Act*.
2. The Notice is dated July 28, 2022.
3. The Respondents and the Interested Parties do not oppose dismissal for want of prosecution.
4. The Applicant's Chairman, Evans Nyambega Akuma, filed a long, 154- paragraph Affidavit, sworn on October 12, 2022, in answering the Notice. Most of the averments are irrelevant to the Notice. A sample of the irrelevancies is captured at paragraphs 90 and 91 of the Affidavit, where the Applicant depones verbatim that: -Judicial experts are set to assess the role of national and other courts registries in bridging the access to justice gap for cross-court disputes. Judicial experts will perform the crucial task at of [sic] how files goes missing in this Court at annual judges and Justice Judicial Conference to be held this year. The judicial gathering which also feature chief justice, ministers of justice, attorneys-general, ministers in charge of EAC affairs, judges from regional and national courts among others.
5. The Applicant ought to have focused on responding to the specific issue communicated to him by the Court, in the Notice to Show Cause, why his Application should not be dismissed for want of prosecution, instead of going into his long windy submissions on obscure matters concerning Judges' Colloquium, and other irrelevant subjects.
6. The record shows that leave to bring the Application for Judicial Review was obtained by the Applicant, on December 31, 2019. The Substantive Application was to be filed within 21 days, which would fall within the month of January 2020. But the Application appears to have been filed in February 2020. The exact date is not legible from the stamp of the Court, but the month filed is February 2020, outside the 21 days granted on December 31, 2019.
7. By July 28, 2022 when the Notice issued, over 2 years had lapsed, since the Substantive Application was filed. Instead of explaining delay, the Applicant shifts blame on the Deputy Registrar, who had a legal obligation to issue the Notice, complaining that the Deputy Registrar failed to evaluate evidence before her, as a result of which she arrived at a perverse decision. According to the Applicant, the Trial Judge has a duty of re-hearing.
8. This position is misconceived. The Deputy Registrar did not hear anything, and there is nothing like the Trial Judge re-hearing the matter. The Deputy Registrar issued a Notice, for the Applicant to appear before the Judge, and explain why he has not prosecuted his Application, over 2 years after he filed it.
9. With tremendous respect to the Applicant' Chairman Evans Nyambega Akuma, who acts in person, he has not shown cause, why his Application should not be dismissed. He complains that the Respondents and the Interested Parties did not respond to the Substantive Application. Lack of responses, did not take away the Applicant's obligation to prosecute the Application, to its logical conclusion.



10. He also complains at paragraph 23 of his Affidavit, that the Notice “therefore cannot be Hon. Deputy Registrar own motions.” If the Court understands the Applicant, its position is that the Deputy Registrar ought not to have moved the Court for dismissal of the Application, for want of prosecution. In the Applicant’s mind, it should be left to the Parties to move the Court, to dismiss the Application for want of prosecution. This again is a misconception, the Deputy Registrar being seized of jurisdiction to issue such Notice, under Rule 16 of the Court’s Procedure Rules, 2016.
11. The record is replete with instances where the Applicant’s Chairman, focuses on calumniating Judicial Officers and Servants, instead of focusing on the matters which he brought to the Court. He has attacked Judges, Deputy Registrar, and Court Staff whom he characterizes as Rogue Court Registry Officers. Fair administration of justice cannot be achieved, where Parties opt for this mode of prosecuting their matters, before the Courts.
12. In the end, the Court finds that the Applicant has not shown cause, why the Application should not be dismissed for want of prosecution.
13. It is ordered : -
 - a. The Application for Judicial Review is dismissed for want of prosecution.
 - b. Costs to the Respondents and the Interested Parties.

Dated, signed and released to the Parties electronically, at Nairobi, under the Ministry of Health and Judiciary Covid-19 Guidelines, this 31st day of January 2023

James Rika

Judge

