



Kilote & 3 others v Shiva Carriers Limited (Employment and Labour Relations Cause 972 of 2016) [2023] KEELRC 157 (KLR) (26 January 2023) (Ruling)

Neutral citation: [2023] KEELRC 157 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
EMPLOYMENT AND LABOUR RELATIONS CAUSE 972 OF 2016**

**AK NZEI, J
JANUARY 26, 2023**

BETWEEN

**NICODEMUS MUTIO KILOTE 1ST CLAIMANT
CARILUS SINOGO NYAJONG 2ND CLAIMANT
HENRY KIKO 3RD CLAIMANT
DANIEL MUNTYITHYA 4TH CLAIMANT**

AND

SHIVA CARRIERS LIMITED RESPONDENT

RULING

1. This is a 2016 suit. Record shows that hearing of the suit has never proceeded, and that the suit was last in Court on December 15, 2020. On September 18, 2022, this Court's Deputy Registrar issued a notice to the parties herein under Rule 16 of the *Employment and Labour Relations Court (Procedure) Rules 2016*, requiring them to attend Court on October 21, 2022 and show cause why the suit could not be dismissed for want of prosecution.
2. Section 16 of the Employment and Labour Relations Court (Procedure) Rules 2016 provides as follows:-
 - (1) 'In any suit where 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 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.'
3. When the suit came up in Court for Notice to show cause on October 28, 2022, Counsel for the Claimant attended Court and told the Court that the Claimant was still desirous of prosecuting the suit. I made the following orders:-
- ' 1. The Claimant shall, within 7 days, file an affidavit showing cause why the suit should not be dismissed for want of prosecution, failing which the suit shall stand dismissed for want of prosecution.
 2. Mention on November 16, 2022.'
4. Seven days lapsed on November 4, 2022, and no show cause affidavit had been filed as at that date. The suit stood dismissed for want of prosecution.
5. The Court's record shows that on November 10, 2022, an affidavit, shown to have been sworn by Kitonga Kiiva Advocate on November 1, 2022, was filed in Court. The said affidavit was clearly filed outside the time ordered by the Court on October 28, 2022, without leave and on a non-existent suit. The same is hereby struck down.
6. The Claimant's suit herein stands dismissed for want of prosecution, and the Court file herein is hereby ordered to be closed.
7. Orders accordingly.

DATED, SIGNED AND DELIVERED AT MOMBASA THIS 26TH DAY OF JANUARY 2023.

AGNES KITIKU NZEI

JUDGE

ORDER

In view of restrictions on physical Court operations occasioned by the COVID-19 Pandemic, this Ruling has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of Court fees.

AGNES KITIKU NZEI

JUDGE

Appearance:

Ms. Ombasa for Claimant

N/A Respondent

