



**Kadoti v Steel Makers Limited (Cause 856 of 2017)
[2023] KEELRC 482 (KLR) (23 February 2023) (Ruling)**

Neutral citation: [2023] KEELRC 482 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
CAUSE 856 OF 2017
AK NZEI, J
FEBRUARY 23, 2023**

BETWEEN

BENJAMIN NDORO KADOTI CLAIMANT

AND

STEEL MAKERS LIMITED RESPONDENT

RULING

1. The application before me is the respondent’s notice of motion dated August 3, 2022. The application is expressed to be brought under sections 1A, 1B, 3A and 6 of the Civil Procedure Act and order 2 rule 15(1) (d) of the Civil Procedure Rules. The following orders are sought:-
 - a. that the memorandum of claim be struck out and the claimant’s claim be dismissed with costs to the respondent/applicant as the same is an abuse of the process of the court.
 - b. that alternatively, the suit be stayed.
 - c. that costs of the application be provided for.
2. The application is based on the supporting affidavit of Johnson Samuel Vasant the respondent’s Croup General Manager, sworn on August 3, 2022. It is deponed in the said affidavit:-
 - a. that the claimant herein has previously filed ELRC No 402 of 2016 in which the matters in issue are directly and substantially in issue in the suit herein, between the same parties.
 - b. that the suit herein is an abuse of the court’s process and the same should be struck off or alternatively stayed.
3. Copies of pleadings filed in this court’s cause No 402 of 2016 (Benjamin Nodoro Kadoti v Steel Makers Limited) were annexed to the said supporting affidavit, and I have confirmed that, indeed, the cause



- of action in the said suit is similar to the cause of action pleaded herein, and that parties in the two suits are the same.
4. The claimant/respondent did not file response to the respondent's application herein, despite having been given an opportunity by this court on September 29, 2022 to do so.
 5. It is worthy noting that the respondent/applicant did not attempt to indicate, in its application herein, the status of this court's said cause No 402 of 2016. The court file for cause No 402 of 2016 was brought up to me with the court file for the suit herein, and I had an opportunity to peruse the same at the time of writing this ruling.
 6. Cause No 402 of 2016 is shown to have been dismissed for want of prosecution by this court (Ndolo, J) on July 12, 2021. On the other hand, the suit herein is shown to have been proceeding in court. The claimant is shown to have testified and closed his case on September 30, 2020 in the absence of the respondent. The respondent's case was closed by court on the said date. The claimant was directed to file and serve written submissions, and the suit was fixed for mention on November 23, 2020. Subsequently, however, parties filed a written consent on June 14, 2021, re-opening the claimant's case, and orders were made in terms of the consent on June 16, 2021. All this while, none of the parties addressed the court on cause No 402 of 2016, which, in any case, had been dismissed for want of prosecution.
 7. In my view, dismissal of the said suit for want of prosecution on July 12, 2021 did not, and does not affect the validity of the suit herein, having been filed long before the said dismissal.
 8. Proceedings in this court are governed by the [Employment and Labour Relations Court \(Procedure\) Rules 2016](#), which are tailored to suit the specialised nature of this court.
 9. Parties instituting proceedings in this court should always acquaint themselves with the court's rules and should cite them in their applications and/or pleadings as may be appropriate. I must, however, mention that this court has, over the years, looked outside its rules and invoked the provisions of the [Civil Procedure Act](#) and the [Civil Procedure Rules](#) in situations where such rules are saved in this court's rules, or where this court's rules are silent on any matter of procedure.
 10. Indeed, rule 38 of the [Employment and Labour Relations Court \(Procedure\) Rules 2016](#) provides as follows:-

“ 38. Subject to these rules, the court may regulate its own procedure.”
 11. Justice of this case demands that the suit herein be heard and determined on merit. Having said that, and in view of all the foregoing, I disallow the notice of motion dated August 3, 2022 and dismiss the same with no order as to costs.
 12. Orders accordingly.

DATED, SIGNED AND DELIVERED AT MOMBASA THIS 23RD FEBRUARY 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:

.....for Claimant

..... for Respondent

