



Kenya Union of Commercial Food and Allied Workers v Mombasa Water Supply & Sanitation Co. Ltd & another (Cause 418 of 2017) [2023] KEELRC 422 (KLR) (16 February 2023) (Ruling)

Neutral citation: [2023] KEELRC 422 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
CAUSE 418 OF 2017
AK NZEI, J
FEBRUARY 16, 2023**

BETWEEN

KENYA UNION OF COMMERCIAL FOOD AND ALLIED WORKERS CLAIMANT

AND

MOMBASA WATER SUPPLY & SANITATION CO. LTD 1ST RESPONDENT

KENYA COUNTY GOVERNMENT WORKERS UNION 2ND RESPONDENT

RULING

1. The suit herein is a 2017 suit, and is not shown to have been prosecuted. On November 10, 2021, 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](#), calling upon them to attend Court on November 24, 2021 and show cause why the suit could not be dismissed for want of prosecution. On November 16, 2021, the Deputy Registrar issued another notice to the effect that the Court would not sit on November 24, 2021 as it would be away on other official duties, and that the matters listed for November 24, 2021 would be dealt with on December 1, 2021.
2. The Claimant did not attend Court on December 1, 2021 to show cause why the suit could not be dismissed for want of prosecution. It was only Counsel for the 2nd Respondent who attended Court, and he applied that the suit be dismissed for want of prosecution. In the absence of any cause being shown to the contrary by the Claimant, the suit was dismissed for want of prosecution.
3. On February 22, 2022, the Claimant filed an application seeking orders:-
 - a. that the Court do issue orders vacating and setting aside its orders dated November 24, 2021 dismissing the suit for want of prosecution.



- b. that the Court do issue orders reinstating the suit to proceed to hearing and determination on merit.
 - c. that the Court do direct the Deputy Registrar to authorize and fix a hearing date for the suit on priority basis.
 - d. that costs of the application be in the cause.
4. The foregoing is the application before me, and is supported by an affidavit of one Dickens Atela, the Claimant's Assistant Secretary General, sworn on February 15, 2022. It is deponed in the said affidavit that the Claimant received the notice to show cause on November 24, 2021, a date on which the said deponent was out of office, and remained out of office until November 30, 2021. No mention of the Deputy Registrar's subsequent notice dated November 16, 2021, which was electronically published to all the Advocates and Litigants, is made in the said affidavit.
 5. The application is opposed by the Respondents. The 1st Respondent filed grounds of opposition on May 18, 2022 (dated November 17, 2022). All the parties filed written submissions on the application pursuant to the Court's directions in that regard.
 6. It ought to be noted that there are no orders of dismissal dated November 24, 2021, as the suit herein was dismissed for want of prosecution on December 1, 2021. The Claimant/applicant is therefore seeking to set aside orders that do not exist. In view of that fact, it will be pointless going into the merits or otherwise of the application. Consequently, the Notice of Motion dated February 15, 2022 is hereby dismissed.
 7. Each party will bear their own costs of the application.
 8. Orders accordingly.

DATED, SIGNED AND DELIVERED AT MOMBASA THIS 16TH 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/Applicant

..... for 1st Respondent

.....for 2nd Respondent

