



**Osike v University of Nairobi (Cause 340 of 2018)  
[2023] KEELRC 1901 (KLR) (27 July 2023) (Ruling)**

Neutral citation: [2023] KEELRC 1901 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 340 OF 2018**

**L NDOLO, J  
JULY 27, 2023**

**BETWEEN**

**GABRIEL AJWANG OSIKE ..... CLAIMANT**

**AND**

**UNIVERSITY OF NAIROBI ..... RESPONDENT**

**RULING**

1. By its notice of motion dated March 31, 2022, the respondent seeks dismissal of the claimant’s claim for want of prosecution.
2. The motion is supported by an affidavit sworn by the respondent’s counsel, Donald Kipkorir and is premised on the following grounds:
  - a. That the suit was filed on March 20, 2018, by way of a statement of claim;
  - b. That the respondent filed its memorandum of response on June 7, 2018;
  - c. That the matter was last in court on June 5, 2018;
  - d. That since June 5, 2018, the claimant has not taken any material steps to prosecute the claim;
  - e. That it is over four (4) years since the case was last in court;
  - f. That the continued existence and uncertainty of the suit is prejudicial to the respondent.
3. The claimant opposes the respondent’s motion by his replying affidavit sworn on April 25, 2023, by which he depones as follows:
  - a. That he filed his claim on March 19, 2018;
  - b. That the matter came up in court on June 5, 2018 but the respondent had not filed its response;



- c. That on July 31, 2018, he wrote to the Court asking for directions but he received no response;
  - d. That the respondent later served him with its memorandum of response on November 14, 2018;
  - e. That upon being served on November 14, 2018, he did not know the next steps in the matter;
  - f. That thereafter, the COVID-19 pandemic hit Kenya and he had challenges following up the matter;
  - g. That he is still interested in pursuing the suit;
  - h. That it is in the interest of justice that he be heard on merit.
4. Rule 16 of the *Employment and Labour Relations Court (Procedure) Rules* provides as follows:
16. Notice to show cause why suit should not be dismissed
- 1. In any suit in which 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 its 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.
5. In his replying affidavit, the claimant blames the COVID-19 pandemic for his failure to take steps towards prosecuting his case.
6. It is however a matter of public knowledge that the pandemic hit the country in the year 2020. The claimant has not explained why he failed to take any action between June 5, 2018 and March 2020, when the first case of COVID-19 was reported in the country.
7. Moreover, even after the containment measures arising from the pandemic were lifted, the claimant did not take any action until the filing of the respondent's Notice of Motion.
8. As held by the Court of Appeal in *Njoroge v Kimani* [2022] KECA 1188, discretionary power is judicial in nature and must therefore be exercised within the confines of the rules of reason and justice. The Appellate Court went further to affirm that where there is delay, a satisfactory reason must be offered.
9. The inordinate delay in prosecuting this matter has not been explained and the only conclusion to make is that the claimant is a disinterested litigant.
10. I therefore allow the respondent's application dated March 31, 2022 and consequently dismiss the claimant's claim for want of prosecution.
11. Each party will bear their own costs.
12. Orders accordingly.

**DELIVERED VIRTUALLY AT NAIROBI THIS 27<sup>TH</sup> DAY OF JULY 2023**



**LINNET NDOLO**

**JUDGE**

**APPEARANCE:**

**GABRIEL AJWANG OSIKE (THE CLAIMANT IN PERSON)**

**MISS ANYANGO H/B FOR MR. KIPKORIR FOR THE RESPONDENT**

