



**Shiakamiri v National Council for Persons with Disabilities (Cause
1107 of 2015) [2023] KEELRC 1932 (KLR) (4 August 2023) (Ruling)**

Neutral citation: [2023] KEELRC 1932 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1107 OF 2015
B ONGAYA, J
AUGUST 4, 2023**

BETWEEN

ELIZABETH IRAKO SHIAKAMIRI CLAIMANT

AND

NATIONAL COUNCIL FOR PERSONS WITH DISABILITIES ... RESPONDENT

RULING

1. The Claimant filed the instant application dated May 25, 2023 through the firm of Wangalwa Oundo & Company Advocates. The application is brought under Section 10 of the *Judicature Act*, Rule 2 of the *High Court Practice and Procedure Rules*, Section 5 (1) of the *Judicature Act*, Sections 1A, 1B and 3A of the *Civil Procedure Act* and all other enabling provisions of the law and prays for the following orders:
 - a. That this application be certified urgent and heard *ex-parte* due to its urgency (Spent).
 - b. That this Honourable Court do set aside or vary its orders issued on April 25, 2023, dismissing the Claimant's suit for want of prosecution.
 - c. That the costs be in the cause.
2. The application is based on the supporting affidavit of Elizabeth Irako Shiakamiri sworn on May 25, 2023 and upon the following grounds:
 - a. The representation by Zena Atetwe Jalenga Advocate of Rashid & Rashid advocates for the respondent raises very serious issues of conflict of interest.
 - b. The claimant or her advocates were not served with the chamber summons application dated March 9, 2023.



- c. That there still exists orders of Contempt of Court and sentencing issued on April 8, 2019 which have not been complied with, varied or set aside.
 - d. This matter was last in Court on April 27, 2022.
 - e. The firm of M/S Hassan Mutembei & Co ceased acting and the respondent had not appointed any advocate to act on behalf of Hassan Mutembi & Company.
 - f. The parties have been negotiating throughout the year 2022 and there are firm proposals from the respondent on how to settle this matter.
 - g. There exist orders of stay of proceedings from the Court of Appeal.
3. The respondent opposed the application by filing the replying affidavit deponed by ZENA A RASHID, counsel on record for the respondent herein, on June 06, 2023 in which she avers that:
- a. The dismissal of this suit for want of prosecution was rightfully justified and that its reinstatement would be tantamount to a miscarriage of justice.
 - b. On April 12, 2023 at 11:19am counsel on record for the respondent effected service of the notice of appointment, hearing notice and chamber summons application via the email address pwangalwa@yahoo.com.com and that she received a call from counsel on 24.04.2023 in which conversation counsel confirmed having received service.
 - c. The claimant has failed to take necessary steps to prosecute this matter since November 12, 2021 when the matter was last listed in Court for hearing of an application by the respondent's former advocates to cease acting.
 - d. The claimant has no reasonable grounds to seek the reinstatement of the case and has not shown good reason for her failure to prosecute this matter for more than three years thus warranting the respondent's application seeking dismissal of the suit by want of prosecution, which application was allowed by this Honourable Court.
 - e. The respondent urged this Honourable Court to find the application without merit and ought to be dismissed with costs to the respondent.
4. The application proceeded for oral hearing July 11, 2023 with Ms Rashid appearing for the respondent and Mr Wangalwa present for the claimant herein. This Court has considered submissions made by both counsels during the said hearing.
5. The material before Court shows that indeed the parties were in negotiations with a view of settling the dispute by compromise. It is also true that there is no good reason advanced for failure by the applicant to attend the show cause notice. It appears the claimant is ready to enter a compromise in what Counsel for the respondent calls taking the respondent in circles and making unreasonable demands. That suggests a reasonable offer to settle would be possible even the suit having been dismissed. Nothing stops the parties from settling outside the Court. The absence of a good reason to attend hearing of the notice to show cause why the suit should not be dismissed shows indeed the applicant is disinterested other than taking the respondent in circles. Such is unacceptable manner to prosecute the suit as is inimical to the just, proportionate and expeditious determination of the dispute per section 3 of the *Employment and Labour Relations Court Act*, 2011. The application will fail with costs.

In conclusion the application dated May 25, 2023 is hereby dismissed with costs.

SIGNED, DATED AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS FRIDAY 04TH AUGUST, 2023.



BYRAM ONGAYA
PRINCIPAL JUDGE

