



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Otieno v SGA Security (Msa) Ltd (Cause 229 of 2018)
[2023] KEELRC 2388 (KLR) (29 September 2023) (Ruling)**

Neutral citation: [2023] KEELRC 2388 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
CAUSE 229 OF 2018
AK NZEI, J
SEPTEMBER 29, 2023**

BETWEEN

MAURICE OUMA OTIENO CLAIMANT

AND

SGA SECURITY (MSA)LTD RESPONDENT

RULING

1. The application before me is the Respondent's Notice of Motion dated 19/7/2021 and filed in Court on 26/7/2021. The following orders are sought:-
 - a. that the Honourable Court be pleased to dismiss the suit herein for want of prosecution.
 - b. that costs of the application be provided for, and be borne by the Claimant.
2. The application is expressed to be brought under Rule 16 of the *Employment and Labour Relations Court (Procedure) Rules 2016*, and Orders 17 rule 2(1) & (3) and 51 rule 1 of the *Civil Procedure Rules*; and is premised on a supporting affidavit of Fenny Atieno Odhiambo, the Respondent's Human Resource Officer, sworn 26/7/2021. It is deponed in the said affidavit that although the Respondent defended the suit upon being served with Summons on the suit herein, and that although the suit was subsequently fixed for hearing severally, the same was adjourned as the Claimant did not attend Court. That the Respondent has, without justification, been put to needless expenses.
3. The application is shown to have been served on the Claimant by substituted service pursuant to the Court's order in that regard. There is on record an affidavit of service in that regard, shown to have been filed on 6/6/2023. The Claimant did not file any response to the application, which stands unopposed.
4. The Court's record show that the Claimant's suit was filed on 13/4/2018, and that the same has never proceeded for hearing. In the absence of any response to the present application explaining the delay by the Claimant in prosecuting the suit, the only logical conclusion that can be drawn is that the Claimant



is not interested in prosecuting his suit. The suit cannot be allowed to be part of daily statistics of case backlog in this Court.

5. In sum, I find merit in the Respondent's application, and the same is allowed. The Claimant's suit herein is hereby dismissed for want of prosecution.
6. Each party will bear its own costs of both the suit and the application.
7. Orders accordingly.

DATED, SIGNED AND DELIVERED AT MOMBASA THIS 29TH SEPTEMBER 2023

AGNES KITIKU NZEI

JUDGE

ORDER

This Ruling has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of the applicable Court fees.

AGNES KITIKU NZEI

JUDGE

