



**Papa v Alboor Jiwan t/a Red Star Service Station (Cause 854 of 2015)  
[2023] KEELRC 2439 (KLR) (12 October 2023) (Ruling)**

Neutral citation: [2023] KEELRC 2439 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA  
CAUSE 854 OF 2015  
AK NZEI, J  
OCTOBER 12, 2023**

**BETWEEN**

**IGNASIO PAPA ..... CLAIMANT**

**AND**

**ALBOOR JIWAN T/A RED STAR SERVICE STATION ..... RESPONDENT**

**RULING**

1. According to the Court’s record before me, the suit herein was initially filed in the Senior Resident Magistrate’s Court, Mombasa on 4/7/2006 as Civil Suit No. 2179 of 2006. The Respondent herein, named as the defendant in the said suit, entered appearance on 21/7/2006 and subsequently filed a statement of defence on 7/8/2006. The suit is shown to have come up before the Magistrate’s Court on 19/10/2007 and 1/8/2008, but nothing happened on those dates as the case is shown to have been adjourned on both dates. No further action is shown to have been taken before the Senior Resident Magistrate’s Court.
2. There is on record a letter by the Chief Magistrate, Mombasa, dated 26/10/2015, forwarding the case file herein to this Court. The letter reads as follows:-

“please find forwarded herewith the above original record pursuant to the orders of Honorable Justice James Rika given on 8<sup>th</sup> July 2015 for hearing and disposal.  
Kindly acknowledge receipt.”
3. Although the order referred to in the said letter does not form part of the Court’s record before me, and I have not seen it, I have no reason to doubt its existence as the aforesaid letter makes reference to this Court’s Misc. Cause No. 8 of 2015. Indeed, the Chief Magistrate’s said letter was in response to this Court’s Deputy Registrar’s letter dated 13/10/2015 calling for the lower Court’s file. Be that as it may.



4. For a record seven (7) years following the aforesaid transfer of the suit to this Court, whereat it was registered as Cause No. 853 of 2015, No action was taken by the Claimant towards prosecution of the suit. On 25/1/2023, this Court's Deputy Registrar issued a written notice to both parties under Rule 16 of the *Employment and Labour Relations Court (Procedure) Rules* 2016, calling upon them to attend Court on 22/2/2023 and to show cause why the suit could not be dismissed for want of prosecution.
5. Rule 16 of the *Employment and Labour Relations Court (Procedure) Rules* 2016 provides as follows:-
  1. In any suit where 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 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.”
6. When the matter came up for hearing of the notice to show cause before me on 22/2/2023, I made the following orders in the presence of the Claimant's Counsel:
  - “(1) The Claimant is granted 21 days to file and serve an affidavit showing cause why the suit should not be dismissed for want of prosecution, failing which the suit shall stand dismissed for want of prosecution.
  - (2) mention on 20/4/2023 for further orders.”
7. On 20/4/2023, Mr. Sewe Advocate, appearing for the Claimant, informed the Court that he had filed the show cause affidavit on 14/3/2023, though the same was found not to have been on record. I fixed the suit for a further mention on 4/5/2023 and directed that the affidavit be placed on record. I further directed that the Respondent be served.
8. On 4/5/2023, Counsel for the Respondent, Mr. Barasa, told the Court that according to the Court's record, the Firm of Mr. Sewe was not on record for the Claimant, and that the show cause affidavit had been filed by the Firm of Mr. Sewe which was not on record. He asked the Court to strike the affidavit off. In response to this, Mr. Sewe submitted that he had prepared a Notice of Change of Advocates and was in the process of filing the same. That failure to file a Notice of Change of Advocates was a technicality which did not go to the root of the matter.
9. It is trite that pleadings and other Court documents can only be filed by the parties to a suit, where such parties are not represented by Advocates, or by Advocates duly appointed by the parties to represent them. Appointment of an Advocate to represent a party in any given suit is signified by filing by the Advocate of a Notice of Appointment of Advocates, or a Notice of Change of Advocates as the case may be. Any document filed by an Advocate who is not on record lacks legality, and can only be struck off if not withdrawn by the person who filed it.
10. The foregoing notwithstanding, I have looked at the Claimant's affidavit shown to have been sworn on 6/3/2023, though filed on 14/3/2023 and date-stamped 20/4/23 by this Court's Registry, just to see if the Claimant has given any valid reason as to why he did not prosecute his suit for a record period of seven (7) years since the suit was transferred to this Court. I have not seen any valid reason.



11. It is to be noted that even before transfer of his suit to this Court, the Claimant had, for a record period of six (6) years, left the suit to lie unprosecuted. This is totally unacceptable. Once a suit is filed in Court, it must be prosecuted. If the same is not prosecuted, the Courts will dismiss it for want of prosecution. The law mandates the Courts to do just that.
12. Having said that, I find and hold that the Claimant has not shown any cause why his suit should not be dismissed for want of prosecution. Accordingly, the suit herein is hereby dismissed for want of prosecution; with no order as to costs.

**DATED, SIGNED AND DELIVERED AT MOMBASA THIS 12<sup>TH</sup> OCTOBER 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**

**Appearance:**

..... for Claimant

..... Respondent

