



**Mwithali v One Residence Limited (Cause 1154 of 2018)
[2023] KEELRC 2406 (KLR) (3 October 2023) (Ruling)**

Neutral citation: [2023] KEELRC 2406 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1154 OF 2018
DKN MARETE, J
OCTOBER 3, 2023**

BETWEEN

IMAANA SILAS MWITHALI CLAIMANT

AND

ONE RESIDENCE LIMITED RESPONDENT

RULING

1. This is an application dated July 20, 2022 and seeks the following orders of court;
 1. That this Honourable Court be and is hereby pleased to dismiss this suit for want of prosecution.
 2. That the costs of this application and the entire suit be awarded to the Respondent/Applicant.
2. It is grounded on the basis that the claimant has not prosecuted his matter one year down the line since the last appearance in court.
3. No motion whatsoever has been forthcoming since the July 26, 2021 when it last appeared in court.
4. The Respondent/Applicant in her written submissions dated written submission outlines and narrates a summary of the background of the issues relied on and reiterates her case dismissal for want of prosecution.
5. The Claimant/Respondent in a Replying Affidavit sworn on November 11, 2022 opposes the application. He expresses as follows;
 4. That the dates as indicated by the Respondent/Applicant in terms of issuance of directions are accurate save to add that the Respondent/Applicant was to file and serve its response within 14 days which service is yet to be effected.



5. That the Claimant/Respondent is desirous of prosecuting the matter and having the same determined on merit.
 6. That vide a request received on the March 24, 2022, the firm sought to have the matter set down for hearing. Attached hereto and marked as “NMIa&b” is a copy of the letter and court receipt.
 7. That the request did not bear any fruits as there was not positive response from the registry as the matter was not set down for hearing.
 8. That the perceived delay in prosecuting the Claim is unintentional and excusable, and the Claimant/Respondent is willing to prosecute his suit and the Respondent/Applicant in question does not stand to suffer any prejudice.
6. The Respondent/Applicant in her undated submissions reiterates her case and prays that this application be upheld and a dismissal of the claim be had.
 7. The claimant/Respondent does not furnish written submission or at all.
 8. Overall, one realizes and notes laxity on both parties to this suit. They share the blame of relaxing in the prosecution of the claim.
 9. Again, a sustenance of the claim would not prejudice any of the parties but serve the ends of justice. This is bearing in mind that the right to a hearing is a fundamental and a basic right that cannot be taken for granted.
 10. I am therefore declined to dismiss application with orders that each party bears their cost of the same.

DELIVERED, DATED AND SIGNED THIS 3RD DAY OF OCTOBER 2023.

D.K. NJAGI MARETE

JUDGE

