



REPUBLIC OF KENYA



KENYA LAW
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**Warui v Carling Wood Investments Limited (Cause E126 of 2021)
[2023] KEELRC 3065 (KLR) (28 November 2023) (Ruling)**

Neutral citation: [2023] KEELRC 3065 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E126 OF 2021
NZIOKI WA MAKAU, J
NOVEMBER 28, 2023**

BETWEEN

MUTUKU IAN WARUI CLAIMANT

AND

CARLING WOOD INVESTMENTS LIMITED RESPONDENT

RULING

1. The Claimant is accused of going to sleep. The Respondent seeks to dismiss his suit for want of prosecution as it has lain inactive since 6th June 2022. The Claimant asserts that the file had been missing as he had been trying to trace the file at the Registry. The motion was disposed of by way of written submissions.
2. The Respondent submits that the dismissal of suits is provided for under order 17 rule 2(1) of the *Civil Procedure Rules*. It was submitted that it is in the court's discretion to issue a notice to parties to show cause why the suit should not be dismissed for want of prosecution after the lapse of one year. The Respondent submits that there is liberty to move the court if a notice is not issued per the provision of order 17 rule 2(3). The Respondent submits that since the last appearance on 6th June 2022, the Claimant had not moved the court hence the dismissal sought. It was submitted that more than 1 year had lapsed and that the assertions by the Claimant that he had been seeking to trace the file are unsupported by any evidence. The Respondent cites the case of *Thathini Development Company Limited v Mombasa Water & Sewerage Company & another* [2022] eKLR where the learned Judge held:

The Legal substratum for dismissal of suits for want of prosecution is founded on the Principles that litigation must be expedited, and concluded by parties who come to court for seeking justice. To assist in clearing backlogs in court and the ever increasing over-loads restoring bad public confidence and trust on the judiciary. Upon filing of cases parties should efficiently and effectively be seen to fast track their hearing and determination.



There should be no delay at all based on legal maxim – Justice delayed is justice denied” Nonetheless, should there be any delay arising from one substantive and justifiable logistical cause or reason, the same should not be inordinate, unreasonable and inexcusable. I say so, as that would be doing grave injustice to one side or the other or both and in such circumstance, the Honorable May in its discretion dismiss the action straight away.

3. The Respondent urged the court to be persuaded to find the motion merited and dismiss the suit for want of prosecution. The Respondent submits that it is the paramount duty of the Claimant to make sure that the matter progresses to its determination and logical conclusion. It cites the case of *Utalii Transport Company Limited & 3 others v NIC Bank Limited & another* [2014] eKLR where the court held that it is the primary duty of the plaintiffs to take steps to progress their case since they are the ones who dragged the defendant to court. The Respondent submits the Claimant having not taken steps demonstrates he is not interested in pursuing the matter. The Respondent thus urged the dismissal of the suit as prayed.
4. The reliance on *Civil Procedure Rules* when there is provision under the Rules of this Court is not viewed with favour. Under the *Employment & Labour Relations Court (Procedure) Rules* 2016, there is provision under rule 16 on the steps that can be taken when a suit is not progressed. Despite moving the Court under the *Civil Procedure Rules* which do not apply in this case, the Court will deal with the application as if it was citing the provisions of rule 16. rule 16 of the *Court Rules* provides as follows:-

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. The *Rules* of this Court do not permit a party to do what the Respondent has done. Perhaps in recognition of the nature of disputes before the Court. As the Claimant has demonstrated he is desirous of having his suit heard and determined, the Respondent’s motion is denied but the Claimant’s suit will be given directions on its disposal immediately after this Ruling.

It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 28TH DAY OF NOVEMBER 2023

NZIOKI WA MAKAU

JUDGE

