



Kenya Union of Domestic Hotels, Educational Institutions and Hospital Workers v United States International University-Africa & another (Cause E166 of 2021) [2023] KEELRC 2751 (KLR) (2 November 2023) (Ruling)

Neutral citation: [2023] KEELRC 2751 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E166 OF 2021
L NDOLO, J
NOVEMBER 2, 2023**

BETWEEN

**KENYA UNION OF DOMESTIC HOTELS, EDUCATIONAL INSTITUTIONS
AND HOSPITAL WORKERS CLAIMANT**

AND

**UNITED STATES INTERNATIONAL UNIVERSITY-AFRICA 1ST
RESPONDENT**

**VICE CHANCELLOR, PAUL ZELEZA UNITED STATES INTERNATIONAL
UNIVERSITY-AFRICA 2ND RESPONDENT**

RULING

1. The subject of this ruling is the Notice of Motion dated 13th April 2023, by which the Respondents seek dismissal of the Claimant’s claim for want of prosecution.
2. The Motion is supported by an affidavit sworn by the Respondent’s Counsel, Viviane N. Otukho and is based on the following grounds:
 - a. That the Claimant has failed to take any step to progress the prosecution of the suit with a view to bringing it to its logical conclusion;
 - b. That the last action on the matter was on 13th May 2021, when the Court delivered its ruling on the application dated 23rd April 2021, seeking interim orders pending the hearing and determination of the main claim;
 - c. That the last pleadings namely; Statement of Response, list of witnesses and witness statement, together with a list and bundle of documents were filed by the Respondent and served on the Claimant on 15th July 2021;



- d. That the pleadings therefore closed on 5th August 2021 and since then, no action has been taken to bring the claim to its logical conclusion;
 - e. That it is now almost two years since the pleadings closed and the obligation to take appropriate steps towards conclusion of the matter rests with the Claimant;
 - f. That it is clear that the Claimant has lost interest in prosecuting the claim;
 - g. That the continued existence of the claim is costly to the Respondents who continue to incur legal charges and disbursements;
 - h. That it is in the interest of justice, fairness and the overriding objectives of the law that the claim be dismissed for want of prosecution.
3. The Claimant opposes the application by a replying affidavit sworn by its Secretary General, Albert Njeru Obed on 19th July 2021.
 4. Njeru depones that the matter is presently before the Court of Appeal, pending the hearing and determination of an appeal from the ruling delivered by Makau J on 13th May 2021.
 5. Njeru further depones that the Court has not been giving dates for matters filed in the year 2021.
 6. Viviane N. Otukho filed a supplementary affidavit sworn on 27th July 2023, deponing that the Claimant has not given a substantive explanation for the failure to prosecute the case. Otukho terms the appeal pending at the Court of Appeal as an extraneous matter.
 7. Otukho further depones that the Claimant's averment that matters filed after 2020 were side-stepped in giving of hearing dates was not supported by any evidence.
 8. The reason given by the Claimant for the delay in prosecuting this matter is that there is an appeal pending at the Court of Appeal on account of an interlocutory ruling delivered by Makau J on 13th May 2021. There is no dispute that such an appeal is indeed pending hearing and determination by the Court of Appeal.
 9. The Respondent however asserts that the pendency of the appeal is not a valid reason for the Claimant not to proceed to prosecute its case as there is no order for stay of proceedings.
 10. While it is true that there is no order for stay of proceedings, where there is an interlocutory appeal, it is good practice to allow the appeal to proceed as its outcome could well have a bearing on the proceedings pending at the trial court.
 11. For this reason, the Court accepts the explanation given by the Claimant for delay in prosecuting the main claim.
 12. The Respondent's application dated 13th April 2023 is therefore declined with costs in the cause.
 13. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 2ND DAY OF NOVEMBER 2023

LINNET NDOLO

JUDGE

Appearance:

Mr. Jaoko for the Claimant



Mr. Ashitva for the Respondent

