



**Kenya Plantation & Agricultural Workers Union v Lauren International Flowers Ltd
(Cause E306 of 2022) [2023] KEELRC 3321 (KLR) (20 December 2023) (Ruling)**

Neutral citation: [2023] KEELRC 3321 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E306 OF 2022
SC RUTTO, J
DECEMBER 20, 2023**

**BETWEEN
KENYA PLANTATION & AGRICULTURAL WORKERS UNION .. CLAIMANT
AND
LAUREN INTERNATIONAL FLOWERS LTD RESPONDENT**

RULING

*****ARGUMENTS**

1. When this matter came up for hearing on 26th July 2023, Mr Muimi, Counsel appearing for the Claimant, indicated that he was not ready to proceed on account that he was desirous to amend the Statement of Claim. He further stated that he had informed the Respondent's Counsel as much. Mr. Murage counsel for the Respondent, opposed the Application noting that the date was taken by consent and the Claimant was yet to file the Application to amend the Statement of Claim.
2. Upon considering the sentiments expressed by both Counsels and specifically noting that the Claimant was yet to lodge the Application to amend the Statement of Claim, the Court declined to grant the adjournment and directed that the matter proceeds at 12:30 pm.
3. At 12:41 pm when the matter was called out for hearing, Counsel for the Claimant renewed his application for adjournment and insisted that he was not ready to proceed and that his client would suffer prejudice in the event the Statement of Claim is not amended. Once again, Counsel for the Respondent opposed the application for adjournment and stated that he was ready to proceed with the hearing and his witness was ready.
4. The Court declined the Claimant's request for an adjournment and observed that it had already given directions that the matter proceeds at 12:30 pm. The Court further noted that the Claimant's Application seeking to amend the Statement of Claim was yet to be filed hence it could not determine any issue in that regard. It was further noted that the matter was last in Court on 2nd May 2023 and it



had been close to three months since then, yet the Claimant did not file the Application to amend its Statement of Claim within the intervening period.

5. In light of the Court's directions, Mr. Muimi requested for five minutes to consult his client on the issue. He reported back to Court that his client was adamant and was desirous of amending the Statement of Claim before proceeding with the hearing. Counsel further stated that his client cannot proceed with a matter that would be prejudicial to it.
6. Subsequently, Mr. Murage moved to dismiss the suit for want of prosecution and contended that the Respondent cannot have a suit hanging over their heads like the sword of Damocles.
7. The Court observed that the Claimant's Counsel had unequivocally stated that he was not ready to proceed on account that he intended to amend the Statement of Claim. The Court further noted that the suit was brought under a Certificate of Urgency and as it touched on redundancy, it was ideal that it proceeds without undue delay. The Court further considered that the hearing date had been taken by consent of both parties on 2nd May 2023. Additionally, it was noted that in view of the fact that the suit belongs to the Claimant, it should have been at the forefront in prosecuting the same but had chosen not to do so. In the premises, the Court was left with no option but to dismiss the suit for want of prosecution.
8. It is that dismissal that has triggered the instant Application which has been brought by the Claimant through a Notice of Motion Application dated 7th August 2023, seeking the following orders:
 1. That the orders issued by Hon. Lady Justice Stella Chemutai Rutto on 26th July 2023 be reviewed, varied and/or set aside.
 2. That the Claim herein dismissed on 26th July 2023 for want of prosecution be reinstated.
 3. That the Applicant be allowed to amend his Claim as per the attached amended Memorandum of Claim dated 31st July 2023.
 4. That the attached Memorandum of Claim be deemed as duly filed.
 5. That the costs of this Application be provided for.
9. The Application is premised on the grounds appearing on its face and the Affidavit of Michael Muimi, Counsel for the Claimant. Briefly, that:
 - a. Prior to the date of the said hearing, Counsel for the Claimant had informed the Respondent's counsel via a letter of his intention to seek an adjournment to enable him amend the Memorandum of Claim.
 - b. By informing the Respondent's counsel of his intention to adjourn the matter, the Claimant's counsel showed good faith.
 - c. In requesting for an adjournment to amend the Claim, the Claimant's Counsel was discharging his duty to the client to act in utmost good faith and in the interest of the client and justice.
 - d. Proceeding with the hearing of the Claim would have greatly prejudiced the Claimant as the Court would not have been properly guided as to the particulars of the dispute before it.
 - e. The adjournment was not to delay and/or frustrate the expeditious disposition of this matter but to aid and/or ensure fair trial to both parties.



- f. It was the first time that the matter was coming up for Hearing of the Claim.
 - g. The Amended Memorandum of Claim had been attached to bring to the attention of the court the amendment the Claimant sought to make.
 - h. The Application has been brought and/or filed without undue delay.
 - i. The Claimant stands to suffer irreparable loss/ damage if the Claim herein is not reinstated and the Respondent will not be prejudiced in any way that cannot be remedied if the claim is reinstated.
 - j. The Claimant is and has always been willing to prosecute the matter and have it dispensed off in a fair and justifiable manner.
10. The Application was opposed through the Respondent's Replying Affidavit sworn on 19th September 2023, by Kenneth Okal, its Human Resource Manager. Briefly, he avers that:
- a. On 2nd May 2023, both counsels appeared in court for pre-trial arrangements wherein they confirmed that they had complied with the pre-trial requirements and the matter was confirmed ready for hearing and the same was set down for hearing on 26th July 2023.
 - b. In reference to the letter dated 24th July 2023 notifying the Respondent's advocate of his intention to amend the Statement of Claim, it was unequivocally captured that the Application seeking the proposed amendment would be filed before the hearing date.
 - c. That contrary to the above, the Applicant's advocate appeared on the hearing date having not filed the application.
 - d. The Applicant's Counsel was called upon severally to prosecute its case but declined the invitation and upon being given the option to either close its case and allow the Respondent to prosecute its case or withdraw the same altogether, he insisted on the need to amend the statement of claim thus forcing the court to make a Ruling on the issue.
 - e. The Court in its Ruling, noted that the Applicant was indolent in having not filed an Application seeking leave to amend the Statement of claim.
 - f. The instant claim lacks relevance, seriousness and merit and the arguments put for by the Applicant seem more akin to sympathy seeking for the Applicant's indolence. It is a mere facade deliberately designed to waste the court's resources.
 - g. The proposed Amended Statement of Claim expounds on issues that have been conclusively resolved by the Honourable Court in its ruling dated 10th June 2022. He fails to identify a single element within the proposed amendments that would rectify the alleged defect the Applicant has alluded to which if left unaddressed, would result in great prejudice as asserted in the Claimant's affidavit.
11. When the matter came up for mention on 31st October 2023, the Court directed that the Application be canvassed by way of written submissions.



Submissions

12. In its submissions, the Claimant has urged the Court to exercise its discretion as guided under Article 159(2) of the [Constitution](#) to ensure that justice is administered to the parties without undue regard to the procedural technicalities. The Claimant has further submitted that dismissal of the claim exposes the Claimant's union members to the threat of breach of their labour relation rights.
13. The Claimant has further urged the Court to exercise discretion in its favour and have the Claim reinstated. On this score, the Court was invited to consider the determination in the case of [Bilha Ngonyo Isaac v Kembu Fram Ltd and another](#) (2018) eKLR and [John Nabashon Mwangi v Kenya Finance Bank Limited](#) (2015) eKLR.
14. The Claimant has further submitted that the dismissal of the suit is a denial of justice as it had every intention to prosecute the claim herein and have it dispensed in a fair and justifiable manner. It posited that the adjournment was sought in good faith and was not a scheme to stall the wheels of justice nor to frustrate the Respondent.
15. The Claimant states in further submission that the proposed amendments have been brought without undue delay. The Claimant further posits that it is in the interest of justice that it be allowed to amend its Memorandum of Claim. In support of its argument, the Claimant sought to rely on the case of [Institute for Social Accountability & Another v Parliament of Kenya & 3 Others](#) (2014) eKLR.
16. The Respondent on the other hand submits that by determining that the Claimant's requests were destitute of merit, the same was in line with the provisions of Order 17 Rule 4 of the [Civil Procedure Rules](#), 2010. That the determination by way of dismissal of the suit for want of prosecution and in the presence of both parties is by its own nature judgment by the Honourable Court in favour of the Respondent as was held in the case of [Njue Ngai v Ephantus Njiru Ngai & Another](#) (2016) eKLR.
17. The Respondent further submits that the Court lacks the requisite jurisdiction to revisit a determination it made subsequent to parties' submissions. the Respondent maintains that the Court cannot sit in judgment of its own decision albeit veiled as a request for setting aside. On this issue, the Respondent has referred to the case of [Homboyz Entertainment Limited v Secretary National Building Inspectorate](#) (2022) eKLR where the court held that an order dismissing a suit after consideration of rival arguments and in the presence of parties cannot be subject of review by the same court.
18. In further submission, the Respondent has stated that even if the court was to entertain the application, the same has fallen short of the prerequisites outlined in Order 45 Rule 1 of the [Civil Procedure Rules](#), 2010 for Review.
19. It is the Respondent's further submission that since the grounds asserted for amending the Statement of Claim mirror those previously presented to the court when the matter was dismissed for want of prosecution, a decision to accede to the applicant's request to "review" the order dismissing the suit, the court would be purporting to assume the role of an appellate court adjudicating upon its own decision; a jurisdictional overreach that contravenes established legal precedent.

Analysis and Determination

20. Having considered the instant Application, the Respondent's Replying Affidavit and the opposing submissions, to my mind, the main issue for determination is whether the Claimant has made a case to warrant issuance of orders setting aside the orders of 26th July 2023, thereby reinstating the suit.



21. As stated elsewhere in this Ruling, the suit was dismissed on 26th July 2023, for want of prosecution upon the Claimant indicating that it was not ready to proceed on account that it intended to amend its Statement of Claim. The Court rejected the application for adjournment, noting that the Application for amendment of the Statement of Claim was not on record and the date for hearing had been taken by consent three months prior to that day.
22. The record bears that the matter came up for mention on 2nd May 2023 and both parties confirmed that the matter was ready for hearing. It is on the foregoing premises that the matter was scheduled for hearing on 26th July 2023.
23. It is also notable that when the matter was confirmed for hearing on 2nd May 2023, the Claimant did not mention that it was desirous of amending its Statement of Claim. As a matter of fact, it did not make such an Application in the intervening period. Additionally, at the date of the hearing, there was no Application on record, to amend the Statement of Claim.
24. As it is, the Claimant had more than enough time to prepare and lodge its intended Application for amendment of the Statement of Claim way before the hearing on 26th July 2023.
25. Indeed, if the Claimant was diligent enough, at the very least, it would have filed the application to amend before the hearing. It is also noteworthy that the Claimant's Counsel indicated in his letter dated 24th July 2023, to the Respondent's Counsel, that he would be filing his Application to amend the Statement of Claim before the hearing date. As it came to be, he did not do so.
26. As I see it, the conduct of the Claimant was not that of a diligent litigant. More so, despite being given an opportunity to present its case, the Claimant declined to proceed and was adamant that it could only proceed upon amending the Statement of Claim. It is worth mentioning that the Claimant's Counsel had indicated that his witness was present. There was therefore no plausible reason why the Claimant declined to proceed with the hearing.
27. In light of the foregoing, it is evident that the Claimant has itself to blame for the dismissal of the suit for want of prosecution. Whereas Article 159(2) (d) of the Constitution requires this Court to ensure justice is not delayed and is administered without undue regard to technicalities, Order 17 rule 1 of the Civil Procedure Rules, 2010, requires as a general rule, that once a suit is set down for hearing, it ought to proceed and shall not be adjourned unless a party applying for adjournment satisfies the court that it is just to grant the adjournment.
28. As I have stated, the Claimant did not advance a plausible reason for adjournment and as such, cannot be heard to say that it did not have its day in Court or has been denied an opportunity to be heard.
29. Further, in my considered view, it is unfair for a party to hold the Court at ransom and decline to proceed with the hearing on account that it wants to amend a Statement of Claim which it filed more than a year before.
30. The total sum of my consideration is that the suit stands dismissed for want of prosecution and nothing has been presented to this Court to allow for a revocation of the dismissal order issued on 26th July 2023 when the Claimant declined to prosecute the suit.
31. Accordingly, the Motion Application to reinstate the suit is dismissed albeit with no order as to costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 20TH DAY OF DECEMBER, 2023.

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STELLA RUTTO



JUDGE

Appearance:

For the Claimant/Applicant Mr. Muimi

For the Respondent Mr. Gitahi

Court Assistant Abdimalik Hussein

ORDER

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court had been guided by Article 159(2)(d) of the Constitution which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of Section 1B of the Civil Procedure Act (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

STELLA RUTTO

JUDGE

