



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR
RELATIONS COURT
AT NAIROBI
CAUSE NUMBER 83 OF 2019
BETWEEN
GIDEON MWANGI KABARU.....CLAIMANT
VERSUS
CRAFT SILICON LIMITED.....RESPONDENT
RULING

1. This Claim was filed on 11th February 2019.
2. It is a comparatively young Claim, pending hearing.
3. The Respondent has however filed an Application dated 21st April 2021, asking the Court to dismiss the Claim for want of prosecution.
4. The Application is founded on the Affidavit of Respondent's Advocate, Stella Wangui Muraguri, sworn on 21st April 2021.
5. She explains that the Respondent filed its Statement of Response on 2nd April 2019.
6. The Claimant filed a Rejoinder on 10th April 2019, closing the Pleading.
7. Parties subsequently filed their Lists of Issues, and on 4th November 2019, the Claimant scheduled the matter for pre-trial conferencing.
8. The Court issued directions on 4th November 2019, that hearing date is obtained at the Registry.
9. The Respondent states that the Claimant has not taken any steps to prosecute the Claim, after directions issued on 4th November 2019.
10. The Claimant relies on the Affidavit sworn by his Advocate Eric Thige Muchiri, on 7th June 2021.
11. He explains that the Application is defective as it is made pursuant to the Civil Procedure Rules, instead of the E&LRC [Procedure] Rules. 2016.
12. He states that under Rule 16 of the E&LRC [Procedure] Rules, a matter can only be dismissed if no steps have been taken within 1 year of filing the Claim.
13. The Claimant scheduled the matter for pre-trial conferencing on 4th November 2019, which was well within 1 year of filing of the Claim.
14. The Claimant explains that prosecution of the Claim has been affected by Covid-19 pandemic. The Chief Justice, in Gazette Notice 2357 of 4th March 2020, made Electronic Case Management Practice Directions, which compelled the Claimant to convert his case to an electronic case. He made his application to the Court on 11th August 2020.

15. The Respondent only complied with the new Practice Directions on 26th April 2021. The Respondent contributed to delay in hearing of the Claim.

The Court Finds: -

16. It is correct that the subject matter, dismissal for want of prosecution of Claims, is regulated under Rule 16 of the E&LRC [Procedure] Rules, 2016, and not by the Civil Procedure Rules invoked by the Respondent.

17. Rule 16, provides that where no application has been made in terms of Rule 15 [for pre-trial conferencing] or no action has been taken by either Party, within 1 year from the date of filing, the Court may give notice in writing to the Parties, to show cause why, the Claim should not be dismissed, and if no reasonable cause is shown to its satisfaction, the Court may dismiss the Claim.

18. A Party may apply for dismissal under Rule 16.

19. The Claimant scheduled the Claim for pre-trial conferencing, within 1 year of its filing, on 4th November 2019.

20. If he was required to take further action within 1 year of 4th November 2019, he has adequately explained that there was a supervening event, Covid-19, which affected the normal operations of the Court.

21. There were Practice Directions issued by the Chief Justice, to regulate e-filing and e-hearing of Claims, in light of the emergence of Covid-19.

22. There is evidence that the Claimant submitted to these Practice Directions and converted his Claim to an electronic file. This was done in August 2020, which would be within 1 year of 4th November 2019, the last time the Parties received directions from the Court.

23. The Respondent brought its Response within the e-system, in April 2021, and the first step taken by the Respondent, upon its compliance, was to file this Application asking the Court to dismiss the Claim for want of prosecution.

24. The Claim, as observed from the outset, is comparatively young. It would be a travesty of justice, if it was dismissed for want of prosecution. There are many Claims older than the Claim herein, which are being prioritized in assigning of hearing dates. The Court should not rush into dismissing relatively fresh matters for want of prosecution, when its calendar does not have space for timeous prosecution of such Claims.

25. The Claimant has shown reasonable cause, why the Claim should not be dismissed for want of prosecution.

IT IS ORDERED: -

a. The Application filed by the Respondent dated 21st April 2021 is declined.

b. Parties shall agree on a suitable hearing date for the Claim at the Registry.

c. No order on the costs.

Dated, signed and released to the Parties electronically, at Nairobi, under the Ministry of Health and Judiciary Covid-19 Guidelines, this 28th day of January 2022.

James Rika

Judge