



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR
RELATIONS COURT AT NAIROBI
CAUSE NUMBER 110 OF 2020

BETWEEN

GEORGE NJAGI MACHUI..... CLAIMANT

VERSUS

HEALTHLINK MATCARE LIMITED

T/A THE NAIROBI WOMEN'S HOSPITAL..... RESPONDENT

RULING

1. The Respondent seeks through the Application dated 29th April 2021, that:-

a. Notice to show cause be issued to the Claimant to show why the Claim should not be dismissed on account of [i] failure to take action in the Claim for one year as stipulated in Rule [16] [1] of the Employment & Labour Relations Court [Procedure] Rules, 2016; and, [ii] failure to extend and/ or renew summons after expiry period of 6 months, as per Rule 11[3] of the said Rules.

b. The Claim be dismissed with costs to the Respondent for want of compliance with the law.

c. Costs be provided for.

2. The Application is founded on the Affidavit of Respondent's Counsel, Dennis Ngaira, sworn on 29th April 2021.

3. He states that Statement of Claim was filed on 24th February 2020. The Summons issued on 6th April 2020.

4. The Statement of Claim and the Summons were served upon the Respondent on 8th April 2021.

5. 6 months had already lapsed since the Summons issued. They were expired at the time of service. The Claimant did not seek to have them extended.

6. The Claim has abated since the Summons served upon the Respondent have expired, and are not valid.

7. Secondly, the Respondent submits that 1 year has lapsed since the Claim was filed, and the Claimant has failed to take any action to prosecute.

8. The Respondent's Application is based on Rules 11[3] and 16[1] of the Employment & Labour Relations Court Procedure [Rules], 2016. Also invoked is Order 51 of the Civil Procedure Rules, which is not applicable in these proceedings.

9. The Application is opposed through the Replying Affidavit of the Claimant, sworn on 7th July 2021. He agrees he filed his Claim on 24th February 2020. The Notice of Summons has a provision for execution and dating by the Deputy Registrar of the Court.

10. The Claimant waited for the Court to sign and date the Notice of Summons before service. The Claimant exhibits e-mail addressed to the Court, dated 15th February 2021, enquiring why the Notice of Summons had not been signed and dated by the Court, to enable the Claimant effect service upon the Respondent.

11. The Claimant pursued the Notice of Summons unflinchingly, and was advised by the Court that his original set of Summons could not be traced, and that he should present fresh documents.
12. He was at the same time advised that operations at the Court Registry had been scaled down due to Covid-19 pandemic. His staff could not access the Court Registry physically. Staff at the Court was similarly reduced to a bare minimum, in compliance with public health guidelines.
13. The Claimant was notified on 6th April 2021 that the documents were ready for his collection. He consequently retrieved the same from the Registry, and served them upon the Respondent, on 8th April 2021.
14. It was later noticed that the Court signed the Notice of Summons, without regard to the timelines. The errors in the summons and failure to prosecute, were not of the Claimant's own making.
15. Parties agreed to have the Application disposed of through Written Submissions, which were confirmed to have been filed and exchanged, at the last mention on 10th December 2021.

The Court Finds: -

16. Order 11 of the Civil Procedure Rules, invoked by the Respondent, and subject matter of High Court decisions relied upon by the Parties, does not apply to proceedings of this Court.
17. Rule 11[3] of the E&LRC Procedure states that Summons shall be valid for a period of 6 months in the first instance, beginning on the date of its issue, and the Court may extend the validity from time to time, if satisfied that it is just to do so.
18. The Rules do not state that the Claim abates, upon expiry of the Notice of Summons.
19. Parties agree that Notice of Summons issued and was served upon the Respondent, outside the validity period, and that there was no extension of the Notice of Summons.
20. The Claimant has however shown that it was not his own fault, which occasioned the expiry of the Notice of Summons, and non-prosecution of the Claim for 1 year since its filing.
21. The Court took more than a year to sign and date the Notice of Summons. The responsible Officers may have been limited in their operations, by the prevailing public health situation. The Claimant assiduously pursued the Notice of Summons. He has exhibited communication he had with the Court.
22. It is true that operations of the Court, and those of the private and public sectors as a whole, have since the advent of Covid-19, been severely limited.
23. The Claimant cannot be blamed for not taking steps to prosecute his Claim for 1 year since the Claim was filed. He has shown that he was actively pursuing the Summons, and that he was prevented from moving his Claim forward, by the problems at the Court Registry and in the public health sector.
24. It would be against fair administration of justice, if the Court dismisses the Claim, for reasons largely attributable to the Court's own failure in processing its Summons.
25. The Claimant has shown reasonable cause why his Claim should not be dismissed as proposed by the Respondent.

IT IS ORDERED: -

- a. Fresh Notice of Summons to issue within 14 days of this Ruling, and service be made upon the Respondent afresh.*
- b. Costs in the cause.*

DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY, AT NAIROBI, UNDER THE MINISTRY OF HEALTH AND JUDICIARY COVID-19 GUIDELINES, THIS 25TH FEBRUARY 2022.

JAMES RIKA

JUDGE