



REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS COURT

AT MOMBASA

CAUSE NO. 367 OF 2016

HUSSEIN ALI MWABADO.....CLAIMANT

VERSUS

SURRAJ PURR LTDRESPONDENT

R U L I N G

1. The suit herein is a 2016 matter, having been filed on 25th May 2016. Hearing has never taken off during the period of over five (5) years that the matter has been in court.
2. There is on record a Notice of Motion dated 27th August 2019, filed by the Claimant on 16th October 2019, seeking leave to amend the Claimant's Memorandum of Claim. This application does not appear to have been prosecuted, over two years since its filing. Indeed, the Court's record shows that on 29/7/2020, the application was fixed (by the court) for hearing on 23rd September 2020. The said date is shown to have been fixed in the presence of counsel for the Respondent, who subsequently served counsel for the claimant with a hearing notice and filed an affidavit of service.
3. On 23rd September 2020, there was no appearance in Court by both parties and the Court returned the file to the registry and directed that parties do move the Court.
4. From 23rd September 2020 to 11th November 2021, no action was taken on the suit towards prosecution of the same. On the 11th November 2021, over a year from the date the matter was last in court, the Court's Deputy Registrar issued a written notice to both parties, calling upon them to attend Court on 25th November 2021 and show cause why the suit could not be dismissed for want of prosecution.
5. The Notice was issued under Rule 16 of the Employment and Labour Relations Court (Procedure) Rules; 2016 which provides:
 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 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 directions given under this Rule."*
6. When the matter came up for notice to show cause on 25th November 2021, the Court directed the Claimant to file and serve an affidavit within seven (7) days showing cause why the suit could not be dismissed for want of prosecution, failing which the suit would stand dismissed.
7. The Respondent was put at liberty to file an affidavit in response to the Notice to show cause within seven (7) days of service by the Claimant.
8. The Court's record shows that on 3rd December 2021, an affidavit was filed in court on behalf of Hussein Ali Mwabado, the Claimant herein. The affidavit is shown to have been sworn on 30th November 2021.

9. On the other hand, Counsel for the Respondent is shown to have filed an affidavit on 9th December 2021, responding to the Claimant's said affidavit. The affidavit is shown to have been sworn by WAFULA WANJALA ADVOCATE on 8th December 2021.

10. This Court's Orders dated 25th November 2021 were quite specific. The Court ordered:-

1) " the Claimant is hereby directed to file and serve an affidavit within seven (7) days showing cause why suit should not be dismissed for want of prosecution; failing which the suit will stand dismissed.

2) The Respondent may, within 7 days of service, file an affidavit in response to the notice to show cause.

3) Mention on 14/12/2021 for further directions."

11. It is quite clear from the foregoing that as on 3rd December 2021, when the Claimant's show cause affidavit was filed, there was no suit on record. The Claimant's suit stood dismissed for want of prosecution at close of Court's business on 2nd December 2021. The Court's Orders dated 25th November 2021 have not been varied, and no cause has been shown why they should be.

12. Consequently, the affidavits filed on 3rd December 2021 and 9th December 2021 respectively were filed on a non-existent suit. The same are hereby struck off. The Claimant's suit herein stands dismissed for want of prosecution.

13. Orders accordingly.

DATED, SIGNED AND DELIVERED AT MOMBASA THIS 24TH DAY OF FEBRUARY 2022

AGNES KITIKU NZEI

JUDGE

ORDER

In view of restrictions on physical Court operations occasioned by the COVID-19 Pandemic, this ruling has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of Court fees.

AGNES KITIKU NZEI

JUDGE

Appearance:

Miss Shiundu for Claimant

Mr. Wafula for Respondent