



REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS COURT

AT MOMBASA

CAUSE NO. 26 OF 2020

JOHN NJOROGI WANJIKU.....CLAIMANT

VERSUS

ALDONAI ENTERPRISES LTD.....RESPONDENT

RULING

1. The claim herein was instituted by the Claimant vide a Memorandum of Claim dated 10th June 2020 and filed in Court on 12th June 2020. There is no appearance on record by the Respondent or a Response to the Claim despite being there on record an Affidavit of Service filed on 11th August 2020 stating that Summons and Suit documents herein were served on the Respondent on 24th July 2020.
2. The Court's record herein shows that the suit came up for mention on 24th September 2020 when the same was taken out on grounds that the trial Judge was on transfer. The Court directed that parties move the Court once the incoming Judge was available.
3. Record further shows that on 24th September 2020, a representative of the Claimant's Advocates attended the Court's Registry and fixed the matter for mention on 9th November 2020. There appears to have been no proceedings taken on 9th November 2020.
4. The Claimant did not take any further action on the suit until he was woken up by a Notice to Show Cause issued by the Court's Deputy Registry on 17th November 2021. The Notice to Show Cause was issued under Rule 16 of the employment and Labour Relations Court (Procedure) Rules 2016, and it called upon parties to the suit to attend Court on 1st December 2021 and show cause why the suit could not be dismissed for want of prosecution.
5. Rule 16 of the Employment and Labour Relations Court (Procedure) Rules, 2016 provides:-
 - (1) ***"In any suit where 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 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 the expeditious hearing and determination of the suit.***
 - (3) ***Any party to the suit may apply for dismissal as provided in paragraph (i).***
 - (4) ***The court may dismiss the suit for non-compliance with any direction given under this Rule."***
6. Counsel for the Claimant attended Court on 1st December 2021 and was directed to file an affidavit within twenty one (21) days, showing cause why the suit could not be dismissed for want of prosecution. The affidavit, sworn by CLIFFORD O. TOLO ADVOCATE, was filed in Court on 14th December 2021.
7. The Claimant and/or his Counsel has not shown cause, to the Court's satisfaction, why no action was taken towards prosecuting the suit during the period between 24th September 2020 when the matter was supposed to come up in Court and 17th November 2021 when the notice to show cause was issued. The allegation that the Claimant expected the Court's Deputy Registrar to issue notices upon allocation of the matter to a new Judge is not valid, and does not amount to a reasonable cause.
8. I have said before, and will repeat it here, that once a suit has been filed, it must be prosecuted in accordance with the law and procedure.

If a suit is not prosecuted, the Court will not allow it to lie in its Registry and become part of daily statistics of case backlog in the Judiciary.

9. I am, however, inclined to exercise the Court's discretion in favour of the Claimant, and do proceed to make the following orders:-

a) the Claimant shall prosecute the suit herein within six months from the date of this Ruling, failing which the suit shall stand dismissed.

b) the suit will be mentioned in Court on 31/3/2022 for pre-trial directions.

DATED, SIGNED AND DELIVERED AT MOMBASA THIS 24TH DAY 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:

Mr. Iddi for Claimant

No Appearance for Respondent