



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR**

**RELATIONS COURT**

**AT NAIROBI**

**CAUSE NUMBER 2297 OF 2017**

**BETWEEN**

**CANORY MUCHAI ..... CLAIMANT**

**VERSUS**

**1. ARK CONSTRUCTION LIMITED .....RESPONDENT**

**2. CHANDRAVANSH CONSTRUCTION LIMITED.....PROPOSED 3<sup>RD</sup> PARTY**

**RULING**

1. This matter was at the last mention, on 10<sup>th</sup> November 2021, indicated as coming for Judgment on 23<sup>rd</sup> February 2022. This must have been indicated in the Court's diary by error.
2. It comes up for Ruling on an Application dated 19<sup>th</sup> May 2021, filed by the Respondent, seeking to have the Claim dismissed for want of prosecution.
3. The Application is based on the Affidavit of Eric Ngugi, Administrative Officer of the Respondent, sworn on 19<sup>th</sup> May 2021.
4. He states that the Respondent applied for a 3<sup>rd</sup> Party Notice on 4<sup>th</sup> July 2018.
5. Leave was granted on 28<sup>th</sup> March 2019.
6. Since then, the Respondent submits, the Claimant has not taken active measures to prosecute the Claim. 2 years have lapsed, since the last step was taken.
7. The Claimant filed a Replying Affidavit, sworn on 7<sup>th</sup> October 2021. He confirms that he filed this Claim on 20<sup>th</sup> November 2017. He was acting in person. He was advised by his Advocates about 3<sup>rd</sup> Party Notice. Leave issued for 3<sup>rd</sup> Party Notice, but the Respondent did not communicate after this, to confirm service of the Notice. The Claimant lost his job during the pandemic, and relocated to his rural home. He did not have adequate communication with his Advocates. He is ready to prosecute the Claim.
8. Parties agreed to have the Application considered and determined, on the strength of their Affidavits and Submissions on record.

**The Court Finds: -**

9. The Application is based on the Civil Procedure Rules. Proceedings of the E&LRC are regulated by this Court's Procedure Rules of 2016. There is a specific Rule on dismissal for want of prosecution. The Respondent does not say why it relies on Civil Procedure Rules.
10. Secondly, it is true that the Respondent applied to bring in a 3<sup>rd</sup> Party. Leave issued, and 3<sup>rd</sup> Party Notice was served by the Respondent. The record indicates that Intended 3<sup>rd</sup> Party filed a Notice of Appointment of Advocates on 14<sup>th</sup> March 2019. The Application for dismissal for want of prosecution, has not involved the 3<sup>rd</sup> Party.

11. Were there Pleadings filed by the 3<sup>rd</sup> Party? Have pre-trial directions been sought by the Respondent, who has brought a 3<sup>rd</sup> Party, before the Claim can be prosecuted?

12. The Claimant states he is not aware of service of 3<sup>rd</sup> Party Notice. Has the Respondent communicated to the Claimant about the Pleadings filed by the 3<sup>rd</sup> Party if any? The Respondent needs to conclude or clarify the position of third party proceedings.

13. The Court does not think that the Respondent has discharged its obligation with regard to 3<sup>rd</sup> Party proceedings, to warrant dismissal of the Claim for want of prosecution. The issues raised by the Claimant revolving around Covid-19 also have some degree of resonance. Operations in the Judiciary and other public service sectors, have considerable been slowed down by the pandemic.

IT IS ORDERED: -

*a. The Application by the Respondent dated 19<sup>th</sup> May 2021 is declined.*

*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 23<sup>rd</sup> day of February 2022.**

**James Rika**

**Judge**