



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT & LABOUR RELATIONS COURT**

**AT MOMBASA**

**CAUSE NO. 10 OF 2019**

**JAMES AGGREY A. OKANGA.....CLAIMANT**

**VERSUS**

**MOMBASA ISLAND CARGO TERMINAL.....RESPONDENT**

**RULING**

1. On 7<sup>th</sup> March 2019, the Claimant (hereinafter referred to as the Applicant), filed a Memorandum of Claim dated 7<sup>th</sup> March 2019, suing the Respondent herein and seeking reliefs as set out in the Memorandum of Claim.

2. The Respondent, though served, did not enter appearance and did not file response to the claim. On 29<sup>th</sup> November 2019, this Court fixed the claim for formal proof on 18/5/2020, a date on which no proceedings are shown to have been taken.

3. The Applicant did not take any further step to fix the claim for formal proof until 17/11/2021 when the Court's Deputy Registrar issued a Notice to Show Cause under Rule 16 of the Employment and Labour Relations Court (Procedure) Rules 2016, calling upon the parties herein to attend Court on 1<sup>st</sup> December 2021 and to show cause why the suit could not be dismissed for want of prosecution.

4. When the matter came up for Notice to Show Cause on 1<sup>st</sup> December 2021, Counsel for the Claimant informed the Court that the Claimant had filed an affidavit in response to the Notice to show Cause. The Court then fixed the matter for Ruling.

5. In his Replying Affidavit sworn on 29<sup>th</sup> November 2021 and filed in Court on 1<sup>st</sup> December 2021, the Claimant depones, *inter alia*:-

**a) that the matter was listed for formal proof on 18<sup>th</sup> May 2020 but did not proceed as the Courts were not sitting during that period because of the Covid 19 pandemic lockdowns.**

**b) that the Claimant subsequently fell ill and failed to give further instructions to his Advocates on how to proceed with the matter, and as such they never listed the same for hearing.**

**c) that the Claimant is keen on prosecuting the claim herein, as he believes that an injustice was committed against him by the Respondent, and it would be fair if the Court hears him and determines the claim on merit.**

4. Rule 16 of the Employment and Labour Relations Court (Procedure) Rules 2016 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 the 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. While appreciating the fact that the Notice to Show Cause dated 17<sup>th</sup> November 2021 was properly and validly issued by the Deputy

Registrar, I must, in the same breath, take judicial notice of the current global Covid-19 pandemic, which the Claimant has pleaded as the reason why the formal proof scheduled for 18<sup>th</sup> May 2020 did not happen.

7. Although the Claimant depones that he subsequently fell ill and as a result failed to give instructions to his advocates on the matter, he has not exhibited any medical record in that regard. I will, however, not hold this against the Claimant. I am inclined to exercise the Court's discretion in favour of the Claimant, and I proceed to give the following directions:-

**a) The claimant shall prosecute his claim herein within six(6) months from the date of this Ruling, failing which the claim shall stand dismissed.**

**b) The matter shall be mentioned in Court on 15<sup>th</sup> February 2022 for purposes of fixing the suit for formal proof.**

**DATED, SIGNED AND DELIVERED AT MOMBASA THIS 3<sup>RD</sup> DAY OF FEBRUARY 2022**

**AGNES KITIKU NZEI**

**JUDGE**

**ORDER**

In view of restrictions on physical Court operations occasioned by the COVID-19 Pandemic, this judgment 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 Onkoba for Claimant

No Appearance Respondent