



REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS COURT

AT MOMBASA

CAUSE NO. 467 OF 2018

KENYA SHIPPING CLEARING FREIGHT LOGISTICS AND

WAREHOUSING WORKERS UNIONCLAIMANT

VERSUS

1. BOLLORE TRANSPORT & LOGISTICS [K] LTD

2. CAREER DIRECTINS LTD

3. SHEER LOGIC MANAGEMENT CONSULTANTS LTD.....RESPONDENTS

R U L I N G

1. When the suit herein came up for hearing on 19th February 2020, the hearing was adjourned and fixed for 21st September 2020. On 21st September 2020 however, the hearing did not proceed as none of the parties attended Court. The Court directed that parties do move the Court.

2. The Court's record shows that no action was taken by either party towards prosecution of the suit until 16th November 2021 when this Court's Deputy Registrar issued a written notice to both parties under Rule 16 of the Employment and Labour Relations Court (Procedure) Rules, 2016 calling upon them to attend Court on 30th November 2021 and show cause why the suit could not be dismissed for want of prosecution.

3. 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 (1).

(4) The court may dismiss the suit for non-compliance with any direction given under this Rule."

4. When the matter came up for Notice to Show Cause before me on 30th November 2021, I directed the Claimant to file and serve an affidavit within seven days showing cause why the suit could not be dismissed for want of prosecution, failing which the suit would stand dismissed for want of prosecution.

5. There is on record an affidavit by one JAMES O. TONGLI, the General Secretary of the Claimant Union, sworn on 3rd December 2021 and stamped at this Court's Registry on 11th January 2022. There is also on record an online Court payment receipt shown to have been issued to the Claimant on 6th December 2021.

6. When the matter came up for mention for further directions on 24th January 2022, the Claimant told the Court that it had complied with the Court's Orders dated 30th November 2021, and had filed the affidavit on 6th December 2021. This was disputed by the Respondents who

told the Court that the affidavit served on them showed that the Show Cause affidavit had been filed on 11th January 2021; outside the seven days period given by the Court on 30th November 2021. They urged the Court to dismiss the suit.

7. On its part, the Claimant told the Court that the affidavit was filed within time (on 6th December 2021), but the receipting took some time. That there is email correspondence in the Court's system in that regard. This allegation was not far-fetched, as there is, indeed, on record an email sent to the Court's registry by the Claimant on Monday December 6th 2021 (at 12.57pm) forwarding the affidavit to the Registry for assessment. As already stated in this Ruling, there is on record an online Court payment receipt issued to the Claimant by the Court on 6th December 2021 for ksh.75 (seventy five Kenya shillings).

8. I am satisfied that the Claimant complied with the Court's orders dated 30th November 2021 by filing an affidavit in reply to the Notice to Show Cause within seven days of the orders.

9. It is deponed in the said affidavit, *inter-alia*:-

a) that due to internal logistical issues, the Claimant's officer who was handling the matter herein left office without handing over files back to the Union/office, and that the unfortunate occurrence impacted negatively on several matters filed by the Union before this Court, and that the situation has now been addressed through elections held earlier this year.

b) that the suit herein touches on redundancy and affects majority of the Claimant members who are former employees of the Respondent, and who have not been paid their redundancy dues.

c) that the Union/Claimant is desirous of prosecuting the claim herein to its logical end and should be allowed to have its day in Court.

d) that the Respondents will not suffer any prejudice if the suit is heard and determined on merit, as they will have an opportunity to argue their respective cases.

e) that the Claimant stands to suffer irreparable loss and damage if the claim is dismissed unheard.

10. Having heard the parties and having considered matters deponed to in the Claimant's affidavit referred to in paragraph 9 of this Ruling, I am inclined to exercise the Court's discretion in favour of the Claimant. Consequently, I make the following orders:-

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

b) the suit shall be mentioned in Court on 31st March 2022 for pre-trial directions and for fixing of a hearing date.

11. Orders accordingly.

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

ONGERA FOR CLAIMANT.

MR. FURAHA KIBALA & MISS WAMBUA FOR RESPONDENT