



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT MOMBASA**

**CAUSE NO. 173 OF 2015**

**VITALIS JUMA ONGESO .....CLAIMANT**

**VERSUS**

**P.N. MASHRU LTD .....RESPONDENT**

**R U L I N G**

1. The suit herein was filed on 27<sup>th</sup> March 2015 vide a Memorandum of Claim dated 26<sup>th</sup> March 2015; and was defended by the Respondent which filed a Response to the Memorandum of Claim on 22<sup>nd</sup> May 2015, dated the same date.

2. When the matter came up for mention in Court on 8<sup>th</sup> November 2019, none of the parties appeared. The matter was stood over generally. No action was taken by either party towards prosecution of the suit until 17<sup>th</sup> November 2021 when this Court's Deputy Registrar issued a written notice under Rule 16 of the Employment and Labour Relations Court (Procedure) Rules 2016, calling upon both parties to attend Court on 1<sup>st</sup> December 2021 and show cause why the suit could not be dismissed for want of prosecution. Rule 16 of the Employment and Labour Relations Court (Procedure) Rules 2016 provides as follows:-

*(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 expeditions 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."*

3. When the suit came up for Notice to Show Cause on 1<sup>st</sup> December 2021, I directed the Claimant to file 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.

4. The affidavit was not filed until 9<sup>th</sup> December 2021. The seven days granted to the Claimant to file the show cause affidavit lapsed on 8<sup>th</sup> December 2021, and the suit herein stood dismissed at the close of the Court's business on that date. The affidavit of MUTIOKOH MWANZIA ADVOCATE filed in Court on 9<sup>th</sup> December 2021 was filed on a non-existent suit. The same is hereby struck down.

5. The Claimant's suit herein stands dismissed for want of prosecution, and the Court file herein is hereby ordered closed forthwith.

6. Orders accordingly.

**DATED, SIGNED AND DELIVERED AT MOMBASA THIS 24<sup>TH</sup> 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:

Miss Wanyama for Claimant.

Mr. Ajigo for Respondent