



REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS COURT

AT MOMBASA

CAUSE NO. 173 OF 2016

ABDULLAHI ALI MOHAMMEDCLAIMANT

VERSUS

1. KENYA PORTS AUTHORITY

2. THE REGISTERED TRUSTEES OF

K.P.A. PENSION SCHEME.....RESPONDENTS

R U L I N G

1. The suit herein was instituted by the Claimant vide a Statement of Claim dated 4th March 2016 and filed in Court on the same date. There seems to have been no effort by the Claimant to prosecute the suit, though the matter has severally come up in Court over the years. The suit is shown to have been in Court for mention on 13th February 2020 when the same was fixed for further mention on 11th June 2020. Record does not show what happened on the said date as no proceedings are shown to have been taken. No action was taken thereafter towards prosecution of the suit.

2. On 11th November 2021, this Court's Deputy Registrar issued notice to the parties herein under Rule 16 of the Employment and Labour Relations Court (Procedure) Rules 2016, calling upon them to attend Court on 25th November 2021 and show cause why the suit could not be dismissed for want of prosecution.

3. Rule 16 of the Employment and Labour Relation 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 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 on 25th November 2021, I directed the Claimant to file an affidavit showing cause why the suit could not be dismissed for want of prosecution. The Affidavit was subsequently filed on 17th January 2022.

5. The Claimant has deponed:-

a) that the reason why he did not prosecute the suit herein was because he was awaiting the outcome of an appeal that had been preferred by the Respondent in a related matter that had similar facts as the suit herein, being Mombasa ELRC Cause No. 496 of 2018 (Betty Uchamba –vs- Kenya Ports Authority) being appeal No. 161 of 2019.

b) that the aforesaid appeal (No. 161 of 2019) is on the issue of (this Court's) jurisdiction.

c) that the said appeal has been prosecuted and judgment thereon is awaited on 18th March 2022.

d) that the outcome of the said appeal will have a direct bearing on the suit herein as it will establish whether or not this Court has jurisdiction to proceed with the suit herein.

e) that in the interest of justice, the suit herein ought to be sustained to enable the Claimant to update this Court on the outcome of the appeal after 18th March 2022.

6. The Claimant has exhibited a copy of the Memorandum of Appeal filed by the Respondent herein in Court of Appeal Civil Appeal No. 161 of 2019 (Mombasa).

7. The averments made in the Claimant's aforesaid affidavit, sworn on 12th January 2022 in reply to the Notice to show Cause herein, are not frivolous. It is on the basis thereon that I am persuaded not to dismiss the suit herein at this stage. I proceed to make the following orders:-

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

b) The suit will be mentioned in Court on 31st March 2022 for purposes of fixing a hearing date or for further directions and/or orders.

8. Orders accordingly.

DATED, SIGNED AND DELIVERED AT MOMBASA THIS 17TH 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:

..... for Claimant

..... Respondent