



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT KISUMU

PETITION NO. 31 OF 2016

AUDREY WAFUMBWA.....1st PETITIONER
BENARD KWALIA.....2nd PETITIONER
MIKE MUSUNGU.....3rd PETITIONER
VALENTINE BIEGO.....4th PETITIONER
DAVID MUSUNDI.....5th PETITIONER
ABISAI AMUGUNE.....6th PETITIONER

VERSUS

SPEAKER, COUNTY ASSEMBLY OF TRANS NZOIA.....1st RESPONDENT
COUNTY ASSEMBLY OF TTRANS NZIOA.....2nd RESPONDENT
CLERK, COUNTY ASSEMBLY OF TRANS NZOIA.....3rd RESPONDENT
COUNTY ASSEMBKLY SERVICE BOARD.....4th RESPONDENT

RULING NO. 2

1. The Respondents moved the Court on 4 July 2018, seeking an order dismissing the Petition for want of prosecution. The ground upon which the application was made was that the Petitioners had failed to take action to prosecute the Petition for about 1 year and 4 months.
2. The Motion was fixed for hearing on 18 September 2018.
3. When the application was called out for hearing on 18 September 2018, none of the parties were present and the Court dismissed the Petition
4. On 19 November 2021, the Petitioners filed a Motion seeking the setting aside of the order dismissing the Petition and reinstating it for hearing.
5. The grounds in support of the Motion were that the Petitioners were not aware of the dismissal; the Respondents' application seeking dismissal of the Petition was not served and that the Petitioners had a strong arguable case raising constitutional questions which had a high chance of success.
6. When the application came up for directions on 29 November 2021, the Petitioners informed the Court that they had served the Respondents through their advocate on record via email (affidavit of service was filed on 26 November 2021).
7. The Respondents were not in attendance.
8. The Court directed the Petitioners to notify the Respondents to file and serve responses (and submissions) within set timelines.

9. The Respondents responses and submissions were not on record by the time of preparation of this Ruling.
10. The Petitioners filed their submissions on 27 January 2022.
11. The Court has considered the Motion, affidavit and submissions.
12. The Petition was dismissed on 18 September 2018. The application to set aside the dismissal order was filed on 19 November 2021, about 2-years after the dismissal.
13. The Petitioners attributed the delay to move the Court timeously to a failure by their erstwhile advocate to communicate to them on the status of the Petition, and further asserted that they only became aware of the dismissal upon instructing the firm of advocate presently on record.
14. While an advocate has a professional obligation to communicate with a client on the progress of a case, a diligent client should also seek to know the progress of a case from the advocate.
15. The Petitioners herein had been interdicted/suspended in 2016. They moved the Court to declare the interdictions unlawful (among other orders) in 2016.
16. The Court declined to issue any interim orders interdicting the interdictions/suspensions. The Petitioners have not disclosed the status of their contractual relationships with the Respondents as of the time of seeking the setting aside orders (whether still on interdiction). The contracts filed in Court show the Petitioners were on fixed-terms contracts which have long lapsed.
17. Without demonstration of diligence to justify the delay, the Court finds there was inordinate delay in moving the Court and further that without a disclosure on the status of the interdictions/employment, the Court may be embarking on an exercise in futility.
18. The Motion dated 15 November 2021 is dismissed with no order on costs.

DELIVERED THROUGH MICROSOFT TEAMS, DATED AND SIGNED IN KISUMU ON THIS 9TH DAY OF MARCH 2022.

RADIDO STEPHEN, MCIARB

JUDGE

APPEARANCES

FOR PETITIONERS KRAIDO & CO. ADVOCATES

FOR RESPONDENTS PROF TOM OJIENDA & ASSOCIATES

COURT ASSISTANT CHRISPO AURA