



Kakuthu v Group (Cause 68 of 2018) [2022] KEELRC 35 (KLR) (28 April 2022) (Ruling)

Neutral citation: [2022] KEELRC 35 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA**

CAUSE 68 OF 2018

AK NZEI, J

APRIL 28, 2022

BETWEEN

EZEKIEL KAKUTHU CLAIMANT

AND

BOLLORE AFRICA LOGISTICS GROUP RESPONDENT

RULING

1. The suit herein was instituted by the Claimant vide a Memorandum of Claim dated 8th February 2018 and filed in Court on the same date. The 2nd Respondent entered appearance on 4th April 2018 and subsequently filed a Memorandum of Response on 26th April 2018. On 10th September 2018, the 2nd Respondent filed a Chamber Summons application dated 7th September 2018 seeking to have the suit against itself struck out. This application does not seem to have been heard, and is therefore still pending despite the matter having been mentioned in Court severally over the years.
2. On 16th November 2021, the Court's Deputy Registrar issued a written 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 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 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 (i).



- (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 case before me on 30th November 2021, Counsel for the Claimant informed the Court that parties had been negotiating the matter and that they needed a mention date for purposes of either recording a consent or fixing a hearing date. On his part, however, Counsel for the Respondent lamented that no action had been taken on the matter since it was last supposed to be in Court on 19th May 2020. He prayed that the suit be dismissed for want of prosecution.
 5. 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.
 6. The affidavit, sworn by the Claimant on 2nd December 2021, was filed on 3rd December 2021 and reiterates the submissions made by the Claimant’s Counsel in Court on 30th November 2021.
 7. As this Court has severally stated elsewhere, a suit once filed must be prosecuted. The Court will not allow suits to lie unprosecuted in its Registry and become daily statistics of case backlog in the Judiciary. The Claimant has not given reasonable cause to the Court’s satisfaction why the suit should not be dismissed for want of prosecution.
 8. I will however, grant the Claimant a final opportunity to prosecute his claim in the following terms:-
 - a. The Claimant shall prosecute the suit herein within six months, failing which the suit shall stand dismissed for want of prosecution.
 - b. Mention for pre-trial directions on 16th May 2022.
 9. Orders accordingly.

DATED, SIGNED AND DELIVERED AT MOMBASA THIS 28TH DAY APRIL 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:

No appearance for Claimant

Azei for Adhoch for Respondent

