



**Kombe v Milly Glass Works Ltd (Cause 249 of 2018)
[2022] KEELRC 1095 (KLR) (28 April 2022) (Ruling)**

Neutral citation: [2022] KEELRC 1095 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
CAUSE 249 OF 2018**

**AK NZEI, J
APRIL 28, 2022**

BETWEEN

ALFRED SAFARI KOMBE CLAIMANT

AND

MILLY GLASS WORKS LTD RESPONDENT

RULING

1. On 15th November 2021, 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 herein to attend Court on 29th November 2021 and show cause why the suit could not be dismissed for want of prosecution.
2. When the matter came up for notice to show cause before me on 29th November 2021, I made the following orders:-
 - (1) The Claimant is hereby directed to file and serve an affidavit within 14 days of today showing cause why the suit should not be dismissed for want of prosecution, failing which the suit shall stand dismissed for want of prosecution.
 - (2) Mention on 24/1/2021.
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. The Show Cause affidavit that I ordered on 29th November 2021 to be filed within fourteen days was not filed within the period of time specified in the order, and extension of the aforesaid period was neither sought nor obtained.
 5. On 19th January 2022, the Claimant’s Advocate filed a Replying Affidavit sworn by herself on 17th January 2022. It was deponed in the said affidavit:
 - a) that hearing of the suit partially proceeded before Justice Rika on 5/3/2019 when the Claimant testified and closed his case and the matter then slated for hearing of the Respondent’s case on 26/2/2020, whereupon hearing was adjourned at the Respondent’s instance.
 - b) that the suit was inadvertently placed before Hon. Justice Ndolo when suit Nos. 247, 250 and 251 of 2018 were consolidated, whereas Justice Rika had declined to consolidate the suit herein with the said other three suits.
 - c) that it was not until Judgment in the consolidated suits was delivered on 21st October 2021 that Counsel realized that the suit had inadvertently been placed before the Honourable Judge for adjudication.
 - d) that the error was not on the part of the Claimant, who is still desirous to have the matter heard to its finality as he already testified and closed his case.
 6. I have perused the Court’s record and have noted that indeed, the Claimant testified and closed his case on 19th November 2019. Hearing was then adjourned to 26th February 2020 as the Respondent sought to substitute its witness statement. On 26th February 2020, hearing was again adjourned by the defence and the case was fixed for hearing on 26th June 2020. The Court’s record does not show what happened on 26th June 2020 as no proceedings are shown to have been taken on that date.
 7. The foregoing facts would have acted as mitigating factors against dismissal of the suit for want of prosecution had the Claimant complied with this Court’s specific orders dated 29th November 2021. There having been no compliance, the suit herein stood dismissed for want of prosecution by the end of 14th December 2021. The Replying Affidavit referred to in paragraph 5 of this Ruling was filed on a non-existent suit. The same is hereby struck down and the Court file herein is ordered closed.
 8. Orders accordingly.

DATED, SIGNED AND DELIVERED AT MOMBASA THIS 28TH DAY OF APRIL 2022

AGNES KITIKU NZEI

JUDG

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 Oloo for Claimant

No appearance for Respondent

