



**Muriuki v Skyline Services Limited (Cause 1476 of 2018)
[2022] KEELRC 74 (KLR) (27 May 2022) (Ruling)**

Neutral citation: [2022] KEELRC 74 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1476 OF 2018**

J RIKA, J

MAY 27, 2022

BETWEEN

FRANCIS GITARI MURIUKI CLAIMANT

AND

SKYLINE SERVICES LIMITED RESPONDENT

RULING

1. The Respondent filed an Application dated 30th June 2021, expressed to be brought under sections 1A, 1B, 3A of the Civil Procedure Act, order 17 rule 2 and order 51 rule 1 of the Civil Procedure Rules, and all other enabling provisions of the law.
2. The Respondent seeks to have the Claim dismissed for want of prosecution.
3. It is explained in the founding Affidavit of the Respondent's Advocate, sworn on 30th June 2021, that there has been an inordinate delay of over 2 years, in taking active steps to prosecute the Claim. The last step taken was on 3rd June 2019 when the Court certified the Claim as ready for trial, with the direction that hearing date be obtained from the Registry.
4. The Application is opposed through the Replying Affidavit of the Claimant's Advocate, sworn on 17th February 2022. He explains that delay is not inordinate. The Claimant was vigilant after filing the Claim and at some point requested for Judgment after the Respondent had failed to respond within the prescribed time. He subsequently asked for mention dates from the Registry, but was advised that the filed could not be traced. Lastly, the Advocate states that his Client fell ill, and in early 2021, flew out of Kenya in search of medical care. It is explained that the Claimant is recuperating abroad, and is ready to prosecute his Claim as soon as he is sufficiently repaired.
5. Parties agreed to have the Application considered and determined on the strength of their Affidavits and Submissions, the latter which were confirmed filed and served, at the last mention on 24th February 2022.



The Court Finds: -

6. The law invoked by the Respondent in bringing this Application to Court, does not apply to the proceedings of the Employment and Labour Relations Court.
7. The proceeding of this Court, including those that touch on dismissal of Claims for want of prosecution, are regulated under the *Employment and Labour Relations Court [Procedure] Rules*, 2016.
8. The applicable Rule would be Rule 16 of this Court's Rule.
9. Delay of 1 year under this Court's Rules, without taking active steps to prosecute, is deemed inordinate, warranting dismissal of a Claim.
10. The last active step taken by the Claimant in prosecuting his Claim was on 3rd June 2019, when the Court certified his Claim ready for hearing, and directed that hearing date be obtained at the Registry.
11. There is no evidence exhibited in the Affidavit of the Claimant's Advocate, to show that the Claimant is unwell, or outside the Country seeking medical care. This explanation for delay in prosecution of the Claim is bare, without support through travel and medical records.
12. His Advocate has exhibited a letter dated 12th March 2020, asking for a hearing date. Other letters exhibited by the Claimant's Advocate, addressed to the Court, seeking hearing date are not relevant to the Application herein, as they were authored prior to 3rd June 2019.
13. If no date issued on 12th March 2020, the Claimant does not explain what further steps he took for the next 1 year to prosecute his Claim. 1 year ended in March 2021. The Application by the Respondent was lodged in June 2021. The Application is still well-founded on fact, even if the last active step taken by the Claimant was on 12th March 2020, rather than 3rd June 2019.
14. The Court would nonetheless give to the Claimant a last opportunity to prosecute his Claim. It is observed that the period of delay, in prosecution of the Claim, has been marked by limited operations in the Courts and in the general economy, due to an adverse public health situation. The Court would hesitate to grant the draconian order of dismissal for want of prosecution, taking stock of slowed-down judicial operations
15. The Claimant has the last chance to take active measures to have his Claim heard.

IT IS ORDERED: -

- a. The Application dated 30th June 2021 filed by the Respondent is declined.
- b. No order on the costs.

DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY AT NAIROBI, UNDER THE MINISTRY OF HEALTH AND JUDICIARY COVID-19 GUIDELINES, THIS 27TH DAY OF MAY 2022.

JAMES RIKA

JUDGE

