



**Nyembwe v Summit Protective Security Services (Cause
936 of 2016) [2022] KEELRC 1472 (KLR) (26 May 2022) (Ruling)**

Neutral citation: [2022] KEELRC 1472 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
CAUSE 936 OF 2016**

**AK NZEI, J
MAY 26, 2022**

BETWEEN

ALI SULEIMAN NYEMBWE CLAIMANT

AND

SUMMIT PROTECTIVE SECURITY SERVICES RESPONDENT

RULING

1. The suit herein was filed by the claimant on December 9, 2016 vide a statement of claim dated December 8, 2016, and summons are shown to have been issued on February 24, 2017. The respondent entered appearance on June 27, 2017, and is not shown to have filed any Response to the claimant's claim.
2. The suit is shown to have been mentioned severally in court from the year 2018 and on June 12, 2020, the Claimant filed a Notice of Motion dated June 8, 2020 seeking leave to serve a hearing notice by substituted service. That application is yet to be prosecuted.
3. On November 10, 2021, the court's Deputy Registrar issued a written notice to both parties under Rule 16 of the *Employment and Labour Relations Court (Procedure) Rules 2016*, calling upon them to attend court on November 24, 2020 and show cause why the suit could not be dismissed for want of prosecution. Rule 16 of the *Employment and Labour Relations Court (Procedure) Rules 2016* provides:-

(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. The Court did not sit on November 24, 2021 and when the matter finally came up for Notice to Show Cause on December 1, 2021, I ordered the Claimant to file 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.
5. The affidavit was filed on December 3, 2021. The claimant deponed that on fixing the suit for hearing and the respondent failing to attend court, the court directed him to file an application to serve by substituted service, and that although filed, the application could not be prosecuted due to the advent of Covid -19.
6. The claimant further deponed that due to Covid-19, he has not been able to prosecute the application, and that he is desirous of having the matter heard and determined.
7. The claimant did not tell the court why it took him well over three years to file the application to serve hearing notice by substituted service. The occurrence of Covid-19 global pandemic was in early 2020, and although court operations in Kenya were scaled down for a few months, court operations eventually picked up with online court proceedings becoming part of court operations.
8. I am not satisfied that the claimant has shown sufficient cause why the suit herein should not be dismissed for want of prosecution.
9. I however exercise the court’s discretion and grant the claimant six months to prosecute the suit herein, failing which same shall stand dismissed for want of prosecution.
10. The suit shall be mentioned in court on June 8, 2021 for directions.

DATED, SIGNED AND DELIVERED AT MOMBASA THIS 26TH DAY OF MAY 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:

N/A for Claimant

N/A for Respondent

