



**Kilonzo v Britam Life Assurance Company (K) Limited (Cause  
339 of 2018) [2022] KEELRC 4055 (KLR) (12 May 2022) (Ruling)**

Neutral citation: [2022] KEELRC 4055 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 339 OF 2018**

**M MBARŪ, J**

**MAY 12, 2022**

**BETWEEN**

**CECILIA NDUNGE KILONZO ..... CLAIMANT**

**AND**

**BRITAM LIFE ASSURANCE COMPANY (K) LIMITED ..... RESPONDENT**

**RULING**

1. The respondent, Britam Life Assurance Company (K) Limited filed application dated November 29, 2021 under the provisions of rule 16(1) and (3) of the *Employment and Labour Relations Court (Procedure) Rules*, 2016 and seeking for orders that the claim be dismissed for want of prosecution with costs to the respondent.
2. The application is supported by the affidavit of Naomi Wandia Njenga Advocate for the respondent and on the grounds that it is now over two years since the claimant last fixed the matter for hearing and has since not taken any action to prosecute the matter and should be dismissed with costs. The claimant is no longer interested in the matter and the suit only remains an unnecessary burden to the respondent.
3. In her affidavit, Ms Njenga avers that the claimant filed the suit on March 19, 2018 and upon service the respondent filed the response on April 5, 2018 and parties attended before the Deputy Registrar on May 29, 2019 but the claimant has done nothing to prosecute the matter. There is no longer any interest demonstrated by the claimant and the suit should be dismissed with costs.
4. In reply, the claimant filed the replying affidavit of Eugene Xavier Wepoh Advocate and who avers that he has personal conduct of the matter and that both parties have since complied with pre-trial directions and there has been a challenge with the registry allocating hearing dates until late 2021 when only 2017 matters were being allocated hearing dates at the registry. The court has since not issued any



notice to parties to take hearing date and the claimant should be allowed to prosecute this case on the merits.

5. Both parties filed written submissions which have been put into account.

**Determination**

6. Indeed under rule 16 of the court rules a party who fails to take action in a matter for over a year invite the dismissal of the suit for want of prosecution. Unless there is good cause established to explain the delay and inaction, upon application or the court on its own motion, a show cause notice is sufficient for parties to attend and demonstrate why the suit should not be dismissed for want of prosecution.
7. The respondent’s case is that it is now over two years since the claimant took any action since pleadings closed. The claimant has not shown any interests to prosecute this suit and the same should be dismissed.
8. On the other hand the claimant through counsel’s case it that notice issued that only 2017 year matters were being allocated hearing dates at the registry and since, no notice has issued inviting parties to take hearing dates. The subject notices have not been attached to the response. Noteworthy, the personal interest of the claimant in this matter is not demonstrated at all. As the right-holder and claimant herein, nothing exists that since filing suit in the year 2018 she had taken any steps seeking to have the matter prosecuted.
9. Despite being served with the instant application with severe consequences, the claimant through her advocate has taken the stand that they are waiting for invitation through the registry to be issued with hearing dates. Such is not the case as upon filing this suit, the claimant had the sole duty to fix the matter for hearing and not wait for an application such as this one.
10. Without demonstrating any interests in the matter, the application by the respondent seeking to have the suit dismissed for want of prosecution to stop and prejudice the same continues to occur is found justified.
11. Accordingly, application dated November 29, 2021 is found with merit and is hereby allowed. The suit is hereby dismissed for want of prosecution. Costs to the respondent.

**DELIVERED IN COURT AT NAIROBI THIS 12<sup>TH</sup> DAY OF MAY, 2022.**

**M. MBARŪ**

**JUDGE**

In the presence of:

Court Assistant: Okodoi

..... and .....

