



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
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**Njonge v Auto Continental Limited (Cause 732 of 2017)
[2022] KEELRC 1410 (KLR) (5 May 2022) (Ruling)**

Neutral citation: [2022] KEELRC 1410 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
CAUSE 732 OF 2017**

**AK NZEI, J
MAY 5, 2022**

BETWEEN

SAMUEL GITHINGITHA NJONGE CLAIMANT

AND

AUTO CONTINETAL LIMITED RESPONDENT

RULING

1. The defended suit herein is shown to have been instituted on 11th September 2017 vide a Memorandum of Claim dated 8th September 2017. According to the Court's record, the Claimant's case was heard and closed on 22nd October 2019, upon which the case was fixed for mention on 4th December 2019.
2. On 4th December 2019, the suit was fixed for hearing on 16th March 2020, and the Claimant was ordered to notify the Respondent. The Court's record does not show what happened on 16th March 2020 as no proceedings are shown to have been taken on that date. No action is shown to have been taken on the matter after the said date.
3. On 10th November 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 23rd November 2021 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 23rd November 2021, and when the matter finally came up for notice to show cause before me on 30th November 2021, I made the following orders:-
- “(a) the Claimant is granted 7 days to file an affidavit showing cause why the suit should not be dismissed for want of prosecution, failing which the suit shall stand dismissed for want of prosecution.
- (b) mention on 26/1/2022
- (c) Notice to issue.”
5. The foregoing orders were made in the presence of the Claimant’s Counsel.
6. The show cause affidavit ordered on 30th November 2021 to be filed within seven days was not filed until 24th January 2022. The said affidavit was filed on a non-existent suit as the suit herein stood dismissed for want of prosecution by close of the day on 7th December 2021. The affidavit of Daniel M. Ngonze Advocate sworn on 24th January 2022 and filed in Court on the same date is hereby struck down. The Court file herein is ordered closed.
7. Orders accordingly.

****DATED, SIGNED AND DELIVERED AT MOMBASA THIS 5TH 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:

Miss Kegeli for Claimant

Mr. Ajigo for Respondent

