



**Ogolah v Postal Corporation Of Kenya (Cause 1186 of 2016)
[2022] KEELRC 4032 (KLR) (30 June 2022) (Ruling)**

Neutral citation: [2022] KEELRC 4032 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 1186 OF 2016
M MBARÚ, J
JUNE 30, 2022**

BETWEEN

SOLOMON OKOTH OGOLAH CLAIMANT

AND

POSTAL CORPORATION OF KENYA RESPONDENT

RULING

1. The respondent, Postal Corporation of Kenya filed application dated May 25, 2021 seeking for orders that the suit herein be dismissed for want of prosecution on the grounds that it has been more than a year since the claimant set the matter for hearing and through his indolence he has depicted indifference and unwillingness to prosecute the suit which is prejudicial to the respondent in costs.
2. The application is supported by the affidavit of Chellion Nyamweya advocate for the respondent and who avers that the claimant filed suit on June 9, 2016 and despite pleadings being closed has failed to set the matter for hearing and it is now over a year without any action. Cumulatively he has taken over 5 years and done nothing. It has become expensive for the respondent to maintain the suit where the claimant has shown no interests at all and should be dismissed for want of prosecution with costs.
3. In reply, the claimant field the replying affidavit of Burton Isindu Advocate and who avers that on July 14, 2017 the claimant requested the respondent to serve bundle of documents but failed to do so and the claimant has been diligent to set up this matter for hearing.
4. There were other letters and communications sent to the Deputy Registrar to allocate a hearing date the last being on May 5, 2020 and then on February 8, 2021 through online portal saw the matter posted online and it is therefore misleading to state that there is failure to prosecute the matter and the application should be dismissed.
5. Failure to prosecute a matter within a period of one year is sufficient reason to dismiss a suit. this is addressed under the Court Rules.



6. Under Rule 16 of the *Employment and Labour Relations Court (Procedure) Rules, 2016* it requires that;
 - 16.(1) In any suit in which 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 its 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.
7. on the record, the respondent filed the instant application on May 25, 2021 seeking dismissal of the suit for want of prosecution.
8. Prior to such date, the matter was last in court on July 7, 2020 when the parties failed to attend after attending at the registry on December 6, 2019 and being allocated a hearing date for May 5, 2020.
9. The period thus of July 7, 2020 to May 25, 2021 broke the 12 month rule stipulated under Rule 16 of the Court Rules and which gives the claimant another chance to urge his case save the court notes the apparent indolence in the matter for the last 5 years the claimant has not been proactive in setting down the matter for hearing.
10. Application dated May 25, 2021 shall not be allowed save the claimant is given 30 days to set down the matter for hearing failure to which the same shall stand dismissed instantly with costs to the respondent. Costs of the instant application go to the respondent.

DELIVERED IN COURT AT NAIROBI THIS 30TH DAY OF JUNE, 2022.

M. MBARŪ

JUDGE

In the presence of:

Court Assistant:

..... and

