



**Ntaragwi v Egerton University (Cause 65 of 2017)
[2022] KEELRC 1514 (KLR) (16 June 2022) (Ruling)**

Neutral citation: [2022] KEELRC 1514 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU
CAUSE 65 OF 2017
DN NDERITU, J
JUNE 16, 2022**

BETWEEN

GIDEON MWENDA NTARAGWI CLAIMANT

AND

EGERTON UNIVERSITY RESPONDENT

RULING

Background

1. On 29th September, 2021 this court, suo motto, issued a Notice to show cause (NTSC) to the Claimant to demonstrate why this cause should not be dismissed for want of prosecution. The said NTSC was fixed for hearing on 14th October, 2021.
2. On 14th October, 2021 Miss Mwangi appeared in court holding brief for Mr. Mureithi for the Respondent while Mr. Waiganjo appeared holding brief for Mr. Musembi for the Claimant.
3. Mr. Waiganjo informed the court that Mr. Musembi who is in conduct of the matter was indisposed. He pleaded for time to file a response to the NTSC. Miss Mwangi informed the court that the Respondent was in support of the NTSC and the court directed the Claimant to file an affidavit in response to the NTSC and the same was stood over to 1st November, 2021.
4. On 1st November, 2021 there was no appearance for the Claimant but Miss Mwangi appeared for the Respondent. By this time an affidavit sworn by one Norah Amito had been filed purportedly in response to the NTSC.
5. Miss Mwangi urged that the said affidavit be expunged from record as the said deponent was neither a party nor a legal representative of the Claimant. The court proceeded and expunged the said affidavit from the court record and the cause was dismissed for want of prosecution.



6. The Respondent had filed a counter-claim and the same was fixed for hearing on 7th February, 2022. However, the hearing of the counter-claim did not proceed on the said date as Mr. Musembi for the Claimant informed the court that the Claimant intended to file an application for reinstatement of the claim.
7. On 9th February, 2022 the Claimant filed an application for reinstatement of the cause. The said Notice of motion is dated 7th February, 2022 and is based on the grounds on the face of it and the supporting affidavit of Gideon Mwenda Ntaragwi, the Claimant, sworn on 7th February, 2022.
8. The said application is expressed to be brought under Section 16 of the [ELRC Act](#) and Rule 33 of the [ELRC \(Procedure\) Rules, 2016](#).
9. In response to the application the Respondent filed a replying affidavit sworn by Janet C. BII, the legal officer of the Respondent, sworn on 4th March, 2022.
10. On 8th March, 2022 Counsel for both parties agreed that this court renders a ruling based on the materials placed before it.

II. Disposal

11. Prior to the issuance of the NTSC by court on 27th September, 2021 this cause was last in court on 9th March, 2020 and a period of over one (1) year had elapsed.
12. There is no explanation whatsoever as to why no action was taken by either party to either apply for dismissal of the same for want of prosecution or to prosecute the counter-claim on the part of the Respondent, or to prosecute the claim on the part of the Claimant.
13. The Claimant has submitted that the reason for his failure to respond to the NTSC is that his Counsel on record was indisposed. However, there is no explanation why no steps were taken to prosecute the matter prior to issuance of the NTSC by the court.
14. On its part, other than supporting the NTSC, the Respondent has offered no explanation as to why it did not take any steps, prior to issuance of the NTSC by the court, to either apply for dismissal of the cause or prosecute the counter-claim.
15. The Claimant has deponed that he is now ready and willing to prosecute the cause. In any event, there is a counter-claim pending and hence the dismissal of the cause does not fully dispose of the matter as the same remains in the court's registry for prosecution of the counter-claim.
16. In the circumstances, both parties are equally to blame for the delay in prosecution of this cause and the counter- claim.
17. The delay can only be attributed to Counsel for both parties and not the parties who may be oblivious of the status of their matter in court as they expect Counsel to deal diligently with such matters.
18. In the circumstances, and for all the reasons stated above, the Notice of motion dated 7th February, 2022 is allowed with costs in the cause. This matter shall now be fixed for hearing on priority basis.
19. For good order and hygiene in legal practice, Counsel are officers of the court and they are expected to be forthright in their delivery in court. When a Counsel states that he is indisposed and cannot attend court, let it be so as a matter of fact. Let us not doubt it unless there is clear evidence to the contrary.

DATED, SIGNED, AND DELIVERED VIRTUALLY AT NAKURU THIS 16TH DAY OF JUNE 2022.

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DAVID NDERITU
JUDGE

