



**Kenya Union of Commercial Food and Allied Workers v Kitui Flour Mills
(Cause 35 of 2019) [2022] KEELRC 1454 (KLR) (9 June 2022) (Ruling)**

Neutral citation: [2022] KEELRC 1454 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
CAUSE 35 OF 2019**

**AK NZEI, J
JUNE 9, 2022**

BETWEEN

**KENYA UNION OF COMMERCIAL FOOD AND ALLIED
WORKERS CLAIMANT**

AND

KITUI FLOUR MILLS RESPONDENT

RULING

1. The suit herein was filed on 26th June 2019 vide a Memorandum of Claim dated 22nd May 2019. There was a mention in Court on 28th January 2020, on which date the suit was fixed for hearing on 25th May 2020. It is not clear what happened on the said date fixed for hearing as no proceedings are shown to have been taken on the said date. No further action is shown to have been taken thereafter towards prosecution of the suit.
2. On 17th November 2021, the Court’s Deputy Registrar issued a written notice to both parties herein, calling upon them to attend Court on 1st December 2021 and show cause why the suit could not be dismissed for want of prosecution. The notice was issued under Rule 16 of the Employment and Labour Relations Court (Procedure) Rules, 2016 which 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.”
3. When the matter came up for notice to show cause on 1st December 2021, Mr. Dicksons Atela, appearing for the Claimant, told the Court that the Claimant had filed an affidavit the previous day in response to the notice to show cause. There being no such affidavit on the Court’s record, I made the following orders:-
 - 1) the Claimant is granted leave to file and to serve an affidavit within 7 days showing cause why the suit should not be dismissed for want of prosecution, failing which the suit shall stand dismissed for want of prosecution.
 - 2) The Respondent, may, if served with an affidavit by the Claimant, file a response thereto within seven (7) days of service.
 - 3) Mention on 7/2/2022.”
4. The Court’s record shows that no show cause affidavit was filed within seven days as ordered on 1st December 2021.
5. When the matter came up for mention on 7th February 2022, Mr. Muunda appeared as holding brief for Mr. Atela for the Claimant, and told the Court that the Claimant had filed a show cause affidavit on 3rd December 2021, an allegation which Counsel for the Respondent disputed as there was no such affidavit on the Court’s record.
6. Having heard both parties on the issue of filing of the show cause affidavit pursuant to the Court’s orders dated 1st December 2021, I made the following orders (on 7th February 2022)
 - 1) the Claimant is granted 7 days to place the affidavit in response to the notice to show cause on record, if at all the same was filed as ordered.
 - 2) Further mention on 28/2/2022.”
7. The Court did not sit on 28th February 2022 and matters listed before this Court on that date were mentioned in Court on 7th March 2022. On the said date (7th March 2022), there was no appearance on the part of the Claimant, and I fixed the matter for Ruling on 9th June 2022. I ordered the Respondent to serve notice on the Claimant. The Court’s Deputy Registrar has also served a Ruling notice on the Claimant by email.
8. The Court’s record shows that no show cause affidavit was filed in Court within seven days of 1st December 2021 as ordered on 1st December 2021. The effect of this is that the suit herein stood dismissed for want of prosecution by close of the Court’s business on 8th December 2021.
9. It is not clear why the Claimant would on 7th February 2022 tell the Court that a show cause affidavit had been filed on 3rd December 2021 when in actual sense no such affidavit had been filed.
10. The affidavits of Dickens Atela and Valerie Takah Advocate shown to have been filed in Court on 7th February 2022, 10th February 2022 and 7th March 2022 respectively were filed on a non-existent suit, as the suit herein stood dismissed by close of the Court’s business on 8th December 2021 as already stated in this Ruling. The affidavits are hereby struck down and the Court file is hereby ordered closed.
11. For record purposes, it must be noted that Court orders must be complied with at all times, unless they are varied, stayed or set aside. Further, attempts by parties to Court proceedings or their representatives to deliberately mislead the Court cannot be countenanced by the Court.



DATED, SIGNED AND DELIVERED AT MOMBASA THIS 9TH DAY OF JUNE 2022

AGNES KITIKU NZEI

JUDGE

ORDER

In view of restrictions on physical Court operations occasioned by the COVID-19 Pandemic, this judgment 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:

Mr. Munnda for Claimant

N/A for Respondent

