



**Mwakuyu & 12 others v Taita Taveta County Government & another  
(Cause 11 of 2019) [2022] KEELRC 1493 (KLR) (2 June 2022) (Ruling)**

Neutral citation: [2022] KEELRC 1493 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA  
CAUSE 11 OF 2019**

**AK NZEI, J  
JUNE 2, 2022**

**BETWEEN**

**JACOB MWAKUYU & 12 OTHERS ..... CLAIMANT**

**AND**

**TAITA TAVETA COUNTY GOVERNMENT & ANOTHER ..... RESPONDENT**

**RULING**

1. The suit herein is shown to have been filed on March 8, 2019 vide a Memorandum of Claim dated March 7, 2019.
2. On November 17, 2021, this Court's Deputy Registrar issued a written notice to the parties herein, calling upon them to attend Court on 1<sup>st</sup> December 2021 and show cause why the suit herein 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 as follows:-

- (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 1<sup>st</sup> December 2021, I directed the Claimants to file an affidavit showing cause why the suit could not be dismissed for want of prosecution, and I fixed the suit for mention on February 24, 2022.
4. The Show Cause affidavit, sworn by Jacob Mwakugu (the 1<sup>st</sup> Claimant) was filed in Court on December 21, 2021. It is deponed in the said affidavit:-
  - a. that on March 8, 2019, this Court issued an order barring the Respondents whether by themselves, their agents and/or servants from advertising, interviewing, selecting, recruiting employing or absorbing new administrators to replace the Claimants.
  - b. that on March 21, 2019, this Court issued another order reiterating the earlier order.
  - c. that the Respondents filed Civil Appeal No. 38 of 2019 and subsequently sought a stay of the proceedings herein vide a Notice of Motion dated March 26, 2019.
  - d. that when the said Notice of Motion came up for hearing on May 6, 2019 before the Court of Appeal at Malindi, the parties entered into a consent allowing the said Notice of Motion pending hearing and determination of an appeal before the Public Service Commission.
  - e. that the appeal before the Public Service Commission was disallowed.
  - f. that on May 30, 2020, parties were issued with hearing notices for June 29, 2020 in Court of Appeal civil appeal No. 38 of 2019 with directions to file written submissions.
  - g. that the Respondents (Appellants) failed to attend the Court of Appeal on June 29, 2020, and as a result Civil Appeal No. 38 of 2019 was dismissed for want of prosecution.
  - h. that the Respondents lodged Civil Application No. 181 of 2020, seeking reinstatement of the dismissed appeal, which application is pending determination.
    - i. that the Claimants filed Civil Application No. 108 of 2019 against the Respondents, being contempt proceedings for disobeying the consent order dated May 6, 2019, by advertising the Claimants' positions as vacant, which application is pending determination before the Court of Appeal.
    - j. that the Claimants have not failed to prosecute the suit herein, and are willing to prosecute the same upon determination of the contempt proceedings pending in the Court of Appeal.
5. On February 24, 2022, Counsel for the Respondents told the Court that the Respondents are not opposed to the suit being sustained as delay in prosecuting the same was occasioned by proceedings before both the Court of Appeal and the Public Service Commission. Counsel, however, submitted that the Respondents believed that the suit had been overtaken by events by virtue of Article 232 of *the Constitution* of Kenya, the *Public Service Act* and Section 77 of the *County Governments Act*. That the claim herein ought to have been filed before the Public Service Commission first.
6. Counsel for the Respondents submitted that on filing the suit herein, the Claimants were directed to go to the Public Service Commission, and that their claim before the Public Service Commission was dismissed, with no appeal being lodged against the said dismissal.
7. Counsel for the Respondents further submitted that on the Claimants' failure to appeal against the decision of the Public Service Commission, the Respondents advertised the Claimants' positions and recruited other officers, who are in their third year; and that since the Claimants are seeking



reinstatement, the suit stands overtaken by events. That if the Claimants are willing, the suit can be compromised with no orders as to costs.

8. Having considered all the foregoing, it is my finding that the Claimants have shown sufficient cause why the suit should not be dismissed for want of prosecution. The Respondents' contention that the suit has been overtaken by events is an issue of fact that can only be determined upon presentation of evidence if and when the suit goes for trial.
9. Although both parties seem to be in agreement that Court of Appeal Civil Appeal No. 38 of 2019 was on June 29, 2020 dismissed for want of prosecution, none of the parties has exhibited the order dismissing the said appeal. If, indeed, the said appeal was dismissed as deponed by the 1<sup>st</sup> Claimant, and if the proceedings before the Public Service Commission were determined, there is nothing barring the Claimants from prosecuting the suit herein, if they wish to do so.
10. Consequently, I decline to dismiss the suit herein for want of prosecution. I however direct the Claimants to prosecute the suit within twelve months from the date of this ruling, failing which the suit herein shall stand dismissed for want of prosecution.

**DATED, SIGNED AND DELIVERED AT MOMBASA THIS 2<sup>ND</sup> DAY OF JUNE 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 Musyoki for Claimant

No appearance for Respondent

