



**Leiyio v Jamii Bora Bank Limited (Cause 344 of 2019)  
[2022] KEELRC 3781 (KLR) (29 July 2022) (Ruling)**

Neutral citation: [2022] KEELRC 3781 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 344 OF 2019**

**J RIKA, J  
JULY 29, 2022**

**BETWEEN**

**SAMUEL LENGETE LEIYIO ..... CLAIMANT**

**AND**

**JAMII BORA BANK LIMITED ..... RESPONDENT**

**RULING**

1. The Respondent filed an Application dated 16<sup>th</sup> September 2021, asking the Court to dismiss the Claim for want of prosecution.
2. The Application is founded on the Affidavit of Jackson Kimathi, Respondent's Head of Legal Department, sworn on 16<sup>th</sup> September 2021.
3. He states that the matter was lastly addressed by the Claimant on 11<sup>th</sup> June 2019, when the Court directed that a hearing date be obtained from the Registry.
4. Two years had lapsed as of 16<sup>th</sup> September 2021, without any action taken by the Claimant, in pursuit of the Claim.
5. The Application is opposed through the Replying Affidavit of the Claimant, sworn on 1<sup>st</sup> March 2022. He states that he wrote to the Court on 19<sup>th</sup> May 2021, asking for a hearing date. The Court replied on 10<sup>th</sup> June 2021, encouraging the Parties to go for mediation. Earlier on 11<sup>th</sup> June 2019, the Court directed the Respondent to supply the Claimant certain documents including the Certificate of Service and minutes of the disciplinary hearing. The Respondent was yet to comply, as of the date the current Application was filed. The Claimant is ready to prosecute the Claim.
6. Parties agreed to have the Application considered and determined on the strength of their Affidavits and Submissions. They confirmed filing and service of the Submissions at the last appearance before the Court on 28<sup>th</sup> June 2022.



**The Court Finds:**

7. The Application is based on Section 1A, 1B, and 3A of the *Civil Procedure Act*, Order 17 Rule 2[3], Order 51 of the *Civil Procedure Rules* and all other enabling provisions of the law.
8. The proceedings of this Court are regulated by the *Employment and Labour Relations Court [Procedure] Rules*, 2016.
9. Specifically Rule 16 addresses the subject of dismissal of Claims for want of prosecution. There is no reason for the Respondent to invoke a procedural regime, which is inapplicable to this Court, while there is a clear procedural regime, regulating procedure of this Court.
10. Furthermore, the Claimant has demonstrated in his Replying Affidavit, that he wrote to the Court through email, on 19<sup>th</sup> May 2021, seeking a date for hearing. The Court replied the same date, undertaking to supply a link to the Claimant, through which he would be assigned a hearing date. The Court then wrote advising the Claimant that it was assigning dates for matters filed in 2017 and previous years. The Claim was filed in 2019. Parties were encouraged to go for mediation. The Claimant cannot be faulted for non-prosecution, in light of this communication from the Court.
11. It is also noted that the Respondent did not comply with orders issued by the Court to supply the Claimant with certain documents. The Respondent's default, would likely have placed a hurdle in the way of expeditious disposal of the Claim.

**It is ordered: -**

- a. The Application filed by the Respondent dated 16<sup>th</sup> September 2021, is declined.
- b. Costs in the cause.

**DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY, AT CHAKA, UNDER MINISTRY OF HEALTH AND JUDICIARY COVID-19 GUIDELINES, THIS 29<sup>TH</sup> DAY OF JULY 2022.**

**JAMES RIKA**

**JUDGE**

