



Kenya National Union of Nurses v Kitengela Medical Services (Cause 832 of 2019) [2022] KEELRC 12960 (KLR) (27 October 2022) (Ruling)

Neutral citation: [2022] KEELRC 12960 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE 832 OF 2019
L NDOLO, J
OCTOBER 27, 2022**

BETWEEN
KENYA NATIONAL UNION OF NURSES CLAIMANT
AND
KITENGELA MEDICAL SERVICES RESPONDENT

RULING

1. This ruling is in reference to a Notice of Motion dated 11th February 2022 by which the Respondent seeks dismissal of the Claimant’s claim for want of prosecution.
2. The application is supported by an affidavit sworn by the Respondent’s Counsel, Thomas Kennedy Balala and is based on the following grounds:
 - a. That the suit herein was initiated by way of a Memorandum of Claim dated 11th December 2019 and filed on 13th December 2019;
 - b. That the Memorandum was filed together with an interlocutory application dated 11th December 2019;
 - c. That a replying affidavit was duly filed on 11th March 2020;
 - d. That the Court delivered a ruling on 19th June 2020 inter alia, directing the Claimant to amend or withdraw the matter with regard to termination and to file three different suits;
 - e. That the Respondent filed an application for review dated 20th July 2020 based on the fact that some members had resigned from the Union. On 24th September 2020 the parties were asked to settle the issue amicably and the Union to receive contributions from the remaining three members;
 - f. That since then the suit has not been placed before a judge for hearing;



- g. That the Claimant's failure to set down the suit for prosecution within a period of two years and one month is a clear demonstration that the Claimant lacks interest in pursuing the claim;
 - h. That it is in the interest of justice that the Claimant's suit as against the Respondent be dismissed as its continued pendency is onerous on the Respondent in terms of legal fees paid by way of retainer;
 - i. That the law envisages that litigation has to come to an end.
3. The Claimant filed Grounds of Opposition dated 25th July 2022 stating:
- a. That the application dated 11th February 2022 lacks merit since the Claimant is interested in the suit and has a right to be heard;
 - b. That the Principal Judge issued a notice directing that hearing dates available were for matters filed in the year 2018 and before;
 - c. That the matter was stood over generally after Radido J, who had delivered a ruling at the application stage was transferred to another court station and as such, the Claimant never received any notice to show cause from the Court and/or any hearing notice after the matter was allocated to another judge;
 - d. That there is no specific order in the ruling dated 19th June 2020 directing the Claimant to withdraw or amend the claim;
 - e. That the Claimant has visited the court registry several times to check on the availability of dates but was informed that only claims filed in the year 2018 and before can be set down for hearing and that the Court would issue notice to parties once the diary for 2019 matters was opened;
 - f. That the Respondent is a busybody as it has filed two frivolous applications for review of the ruling delivered on 19th June 2020 which were dismissed. Further to that, the Respondent has not complied with the said ruling;
 - g. That the Claimant intended to cite the Respondent for contempt of court since it stopped deduction of union dues from the Claimant's members but the Claimant is interested in the determination of the whole suit where it is seeking recognition, non-remitted union dues in arrears and costs.
4. While the Respondent pursues dismissal of the Claimant's claim for want of prosecution, it turns out that the Respondent itself has not bothered to file a Reply to the claim on the pretext that the claim is omnibus in nature. I will say two things; first, it is not open to a party to dictate to the opposite party how they ought to present their case and second, a Respondent who has not responded to the claim cannot accuse the Claimant of failure to prosecute the claim.
5. The Respondent's application dated 11th February 2022 is therefore without merit and is thus dismissed with costs to the Claimant.
6. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 27TH DAY OF OCTOBER 2022

LINNET NDOLO

JUDGE



Appearance:

Mr. Kinoti for the Claimant

Mr. Balala for the Respondent

