



**Mango v Hakika Transport Services Ltd (Cause 220 of 2016)
[2022] KEELRC 12967 (KLR) (27 October 2022) (Ruling)**

Neutral citation: [2022] KEELRC 12967 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA
CAUSE 220 OF 2016
AK NZEI, J
OCTOBER 27, 2022**

BETWEEN

ELIUD FERDINARD KEYA MANGO CLAIMANT

AND

HAKIKA TRANSPORT SERVICES LTD RESPONDENT

RULING

1. The suit herein was instituted on March 28, 2016 vide a memorandum of claim dated February 8, 2016. The Respondent entered appearance on May 8, 2016 and subsequently filed response to the memorandum of claim on June 27, 2016. On July 25, 2016, the respondent filed a witness statement and list of documents, followed up by a supplementary list of documents on October 11, 2011.
2. The court's record shows that on May 20, 2016, a representative of the claimant's advocates attended this court's registry and fixed the matter for mention for directions on June 27, 2016. The record does not show what happened on the said date as there are no Proceedings taken on that date. Thereafter, the claimant did not take any action towards prosecution of the suit.
3. On March 19, 2022, the respondent filed a notice of motion dated February 8, 2022 seeking dismissal of the suit for want of prosecution. That is the application before me.
4. The application is opposed by the claimant vide a replying affidavit sworn by himself on March 28, 2022 whereby he depones that he was all along represented by counsel whose advise on why the suit was not being set down for hearing he could not doubt, and that he is desirous of prosecuting the suit.
5. Dismissal of suits by this court for want of prosecution is provided for in 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.”
6. Whereas the foregoing rule provides for dismissal of a suit for want of prosecution if the claimant fails to take action towards prosecution of his suit for one year, the claimant herein failed to take action towards prosecution of his suit for a period of over five years. This is unacceptable. The claimant has attempted to shift blame to his previous counsel, and he is shown to have changed Advocates on March 25, 2022, apparently upon service of the present application.
7. On March 29, 2022, I directed parties herein to file written submissions on the application, which I have considered.
8. The respondent has cited Court of Appeal’s decision in the case of *Habo Agencies Limited -vs- Wilfred Odhiambo Musingo* [2016] eKLR where the court stated as follows:-

“the applicant’s submission lays blame on its previous counsel on record, there is nothing on record to show that the applicant was diligent in pursuing its appeal; the applicant has not shown that it was actively taking action to follow its appeal and ensure that it is heard and determined. It is the applicant’s submission that the appeal was not heard as a result of mistakes on the part of its counsel. As we have stated, there is nothing on record to show that the applicant actively or at all pursued its appeal. In the absence of such evidence, we are not persuaded that the single judge erred in his findings and determination in the ruling dated January 16, 2015.”
9. In the present case, the claimant has not demonstrated that he made any effort to follow up on his case and to ensure that the same was prosecuted. The claimant himself cannot run away from blame for failing to prosecute or to ensure prosecution of his suit. Having said that, I find merit in the notice of motion dated February 8, 2022, which I allow.
10. Accordingly, the claimant’s suit herein is hereby dismissed for want of prosecution. Each party will bear its own costs of both the application and the suit.
11. Orders accordingly.

DATED, SIGNED AND DELIVERED AT MOMBASA THIS 27TH DAY OF OCTOBER 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:

..... for Claimant/Respondent

..... for Respondent/Applicant

