



**Karisa v Hakika Transporters Ltd (Cause 777 of 2017)  
[2022] KEELRC 13298 (KLR) (24 November 2022) (Ruling)**

Neutral citation: [2022] KEELRC 13298 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT MOMBASA  
CAUSE 777 OF 2017  
AK NZEI, J  
NOVEMBER 24, 2022**

**BETWEEN**

**KALUME KAZUNGU KARISA ..... CLAIMANT**

**AND**

**HAKIKA TRANSPORTERS LTD ..... RESPONDENT**

**RULING**

1. On 18<sup>th</sup> August 2022, this Court's Deputy Registrar issued a written notice pursuant to Rule 16 of the Employment and Labour Relations Court (Procedure) Rules 2016, calling upon both parties to attend Court on 23<sup>rd</sup> September 2022 and show cause why the suit could not be dismissed for want of prosecution. The Notice to show cause was issued after the parties failed to take action towards prosecution of the suit since 24<sup>th</sup> May 2021 when the matter was last in Court.
2. When the matter came up in Court for the Notice to Show Cause on 23<sup>rd</sup> September 2022, Counsel for the Claimant told the Court that the Claimant was still interested in pursuing the matter; and that for some time, the Court file had been unavailable at the Court's Registry, hence no date could be fixed on the matter. On the other hand, Counsel for the Respondent submitted that the Claimant had lost interest in the matter, and asked the Court to dismiss the suit for want of prosecution.
3. I ordered the Claimant to file an affidavit within 7 days of the said date, showing cause why the suit could not be dismissed for want of prosecution, failing which the suit would stand dismissed for want of prosecution.
4. On 28<sup>th</sup> September 2022, the Claimant's Advocates filed an affidavit in reply to the Notice to Show Cause, sworn by Daniel M. Ngonze Advocate on even date. It is deponed in the said affidavit that parties having filed all their pleadings, witness statements and documents, the matter was listed on a number of occasions for various purposes, and was listed for hearing on 7<sup>th</sup> May 2020, which date was scuttled by the onset of the covid-19 pandemic in Kenya, and that after this Court relocated to the



Old Court Building, the Claimant experienced difficulties in retrieving files from the Court's Registry for fixing of dates.

5. Counsel further deponed, inter-alia:-
  - a. that he personally visited the Court's Registry in August 2020 in search of a number of his files, the file herein included, that had been affected by closure of Court operations due to covid-19 pandemic and this Court's relocation to the Old Court Building (Mombasa), and experienced severe difficulties in retrieving files for purposes of fixing dates.
  - b. that Counsel's firm was advised by the Registry personnel to take a Mention date for the cause herein, by which time the file would hopefully have been retrieved.
  - c. that the matter was fixed for mention on 25/5/2021 and a Mention Notice was served, but on the scheduled date, the Court file had not been retrieved.
  - d. that Counsel for the Claimant wrote a letter to this Court's Deputy Registrar on 27/5/2022, setting out his predicament.
  - e. that progression of the suit herein has been slowed down by negotiations between the parties upto January 2020, the Covid-19 outbreak and unavailability of the Court file, among other factors.
6. Documents annexed to the aforesaid supporting affidavit included:-
  - i. the pleadings filed by the Respondent herein.
  - ii. a Mention Notice notifying the Respondent's Counsel of a mention of the suit fixed for 25<sup>th</sup> May 2021.
  - iii. a letter dated 20<sup>th</sup> September 2021 by the Respondent's Advocates inviting the Claimant's Advocates to attend this Court's Registry on 24<sup>th</sup> September 2021 for fixing of a hearing date for the suit herein.
  - iv. an invitation letter by the Respondent's Advocates dated 11<sup>th</sup> May 2022 inviting the Claimant's Advocates to attend this Court's Registry on 20<sup>th</sup> May 2022 for fixing of a hearing date for the suit herein.
  - v. a letter by the Claimant's Advocates, dated 27/5/2022, addressing this Court's Deputy Registrar on the unavailability of the Court file herein.
7. The Claimant's Counsel further filed a supplementary affidavit on 3<sup>rd</sup> October 2022.
8. Dismissal of suits by this Court for want of prosecution is provided for 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."



9. I am satisfied that the Claimant has shown reasonable cause why the Claimant's suit herein should not be dismissed for want of prosecution. Consequently, I make the following orders:
- a. the Claimant shall prosecute the suit herein within six months, failing which the suit shall stand dismissed for want of prosecution.
  - b. the suit shall be mentioned in Court on 7<sup>th</sup> December 2022 for purposes of fixing a hearing date.
10. Orders accordingly.

**DATED, SIGNED AND DELIVERED AT MOMBASA THIS 24<sup>TH</sup> DAY OF NOVEMBER 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 Nzisa for Claimant

Mr. Otuoma for Respondent

