



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**

**AT NAIROBI**

**CAUSE NO. 2019 OF 2016**

**MOLLY AYIEMBA .....CLAIMANT**

**VERSUS**

**SNV/NETHERLANDS DEVELOPMENT ORGANIZATION.....RESPONDENT**

**RULING**

1. The respondent brought a Notice of Motion Application dated 2/7/2020 praying for the suit to be dismissed for want of prosecution on grounds set out on the face of the notice of motion marked (a) to (f) and in the Supporting Affidavit of Henry Mugane the nub of which is that the suit was filed on 29/9/2016 and more than 3 years and ten months have since lapsed but the claimant has failed to take any step to prosecute the suit. That the delay is inordinate and is prejudicial to the interests of the respondent.

2. The Court has considered the Court record and noted that the respondent filed a Statement of defence on 4/11/2016 and the claimant filed a reply to the Statement of defence on 25/11/2020 without leave of Court and after this application was filed on 22/7/2020.

3. The Claimant has filed a replying affidavit to the application dated 9/9/2020 in which the Advocate for the Claimant Mr. Martin Njiru deposes that the failure to prosecute the matter was not caused by the claimant but by circumstances beyond her control.

4. The Court has considered the submissions by the parties including Halsbury's Laws of England, 4<sup>th</sup> Edition Vo. 37 at paragraph 48 where it is stated:-

“The power to dismiss an action for want of prosecution without giving the plaintiff the opportunity to remedy his fault will not be exercised unless the Court is satisfied that the default has been intentional and contumelious or that there has been prolonged or inordinate delay on the part of the plaintiff or his lawyer and that such delay will give rise to substantive risk, that is not possible to have a fair trial for the issues in the action or is such as is likely to cause or to have serious prejudice to the defendant either as between them and third parties.”

5. The Court has considered the grounds set out in the notice of motion and the contents of the Supporting affidavit and is satisfied that the delay in prosecuting the matter has been inordinate. However, the Court is not satisfied with the second limb of the test that the applicant has demonstrated that it shall not be possible to have a fair trial of the issues in the action by fact of the delay and/or that the applicant shall suffer serious prejudice if the matter is now expedited and set down for hearing.

6. Accordingly, the Court though hesitantly, dismisses the application and cautions the Claimant to proceed with haste to prosecute the suit. The Court admonishes the advocates for the claimant for sneaking in a reply to the statement of defence many years, upon receipt of the statement of defence and after this application had been filed without leave of Court. The court admits the said reply however, since this is clearly the mistake of Counsel and not the claimant.

7. In the final analysis, the application is dismissed with no order as to costs.

8. The parties to take pre-trial directions on the date of this ruling.

**Dated and delivered at Nairobi this 24<sup>th</sup> day of February, 2021.**

**MATHEWS N. NDUMA**

**JUDGE**

## **ORDER**

In view of the declaration of measures restricting court of operations due to the COVID-19 pandemic and in light of the directions issued by his Lordship, the Chief Justice on 15<sup>th</sup> March 2020, this ruling has been delivered to the parties online with their consent. They have waived compliance with **Order 21 rule 1 of the Civil Procedure Rules** which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court has been guided by **Article 159(2)(d)** of the Constitution which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under **Article 48** of the Constitution and the provisions of **Section 18 of the Civil Procedure Act (chapter 21 of the Laws of Kenya)** which impose on this court the duty of the court, *inter alia*, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

**MATHEWS N. NDUMA**

## **JUDGE**

### **Appearances**

Mr. Obae for respondent/Applicant

Mr. Njiru for Claimant/respondent

Ekale – Court clerk.