



REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS COURT OF KENYA

AT NYERI

CAUSE NO. 136 OF 2014

(Before D.K.N.Marete)

DAVID NYAMAI.....1ST CLAIMANT
FREDRICK CHIBOLE MUSA.....2ND CLAIMANT
HARRISON IRUNGU MAINA.....3RD CLAIMANT
JAMES NJOROGE KIURA.....4TH CLAIMANT
JAMES KENNETH KIARIE NGANGA.....5TH CLAIMANT
JOSEPH OJWANG OWINO.....6TH CLAIMANT
JOSEPHAT MUSYOKI MUTUA.....7TH CLAIMANT
PETER MWANIKI NJOGU.....8TH CLAIMANT

VERSUS

DEL MONTE KENYA LIMITED.....RESPONDENT

RULING

This is an application by way of Notice of Motion dated 20th January, 2021 and seeks the following orders of court;

1. That, the Honourable Court be pleased to dismiss this Cause as brought by the 4th, 5th and 8th Claimants for want of prosecution.
2. That the Claimants above-mentioned be condemned to pay the Respondent the costs of this Application and the costs of the Cause in any event.
3. That the Honourable Court be pleased to make such further ORDERS as are expedient and necessary for the ends of justice to herein.

It is grounded as follows;

- a) The remaining Claimants, despite being alerted, have never taken any or significant step to set down this suit for hearing, since the Cause was partly determined vide Ruling of the Court of Appeal in Nyeri Court of Appeal Civil Appeal No.44 of 2016 delivered on the 27th March 2019; the remaining Claimants are therefore guilty of grave inordinate and inexcusable delay.
- b) It is plain and obvious that the remaining Claimants have lost interest in the proceedings and it is only proper and just that the Respondent and the Honourable Court be disencumbered of the proceedings.
- c) Having appreciated the age this these proceedings were lodged over 7 years ago and the date of the alleged cause of action being over 9 years ago, it is the persuasion of the Respondent that the Claimants' conduct in failing to prosecute this Cause, has

caused irredeemable prejudice to the Respondent.

d) That in these circumstances it is only fair and just that this Honourable Court grants the Orders sought herein.

The application is not defended, or at all.

The Claimants/Applicants have not responded to the application. This is despite service, prodding and even cajoling on the part of the Respondent.

At the hearing on 15th March, 2021, counsel for the Respondent, one, Mr.Maruti, submitted that the Claimants/Respondents were served with the application on 8th March, 2021.

Further, on the morning of the hearing, counsel had spoken/ conversed with Miss Racheal Masika, Advocate and counsel for the Claimants and served her with the link to access court on a phone number she had provided.

Due to her absence from the virtual meeting, the court directed that counsel for the applicants locates her and brings her on board. Despite this, counsel did not join the meeting. She displayed reluctance and *in toto* ignored our call to attend court.

Counsel for the applicant further submitted that the application seeks a dismissal of the claim against the 4th, 5th and 8th Claimants for want of prosecution, this having taken so long a time since their last attempt at its prosecution.

It was counsel's further submission that the remaining claims were struck out by the Court of Appeal in Civil Appeal No.44 of 2016 in a Judgment delivered on 27th March, 2019. Ever since, the claimants have not taken any action to move their matter.

This is indeed a dull matter. What in the absence of the faintest word from the Claimant/Respondents despite service. The court also bears in mind the long history of the matter which dates back to 24th October, 2014, the date of the filing in court. This is tending to 7 years ago.

This court has no choice in the matter. Having been alerted of the visible disinterest of the claimants to deal and prosecute their cases and particularly this application, our choices are limited.

I am therefore inclined to allow the application with orders that parties bear their costs of the same and also the main cause/claim in this respect.

The claims against the 4th, 5th and 8th claimants be and is hereby dismissed for want of prosecution.

DATED AND DELIVERED AT NYERI THIS 23RD DAY OF MARCH, 2021.

D.K.NJAGI MARETE

JUDGE

Appearances

1. Mr. Maruti instructed by Simba & Simba Advocates for the Respondent/ Applicants.
2. No appearance for the Claimant/Applicants