



**Mwaniki v Judicial Service Commission (Cause 1387 of 2017)  
[2021] KEELRC 2315 (KLR) (9 March 2021) (Ruling)**

Neutral citation: [2021] KEELRC 2315 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE 1387 OF 2017  
M MBARÚ, J  
MARCH 9, 2021**

**BETWEEN**

**ROSE WANJIRU MWANIKI ..... CLAIMANT**

**AND**

**JUDICIAL SERVICE COMMISSION ..... RESPONDENT**

**RULING**

1. The respondent, Judicial Service Commission filed application dated 4th November, 2020 under the provisions of Order 17 Rule 2(3) and Order 51 of the *Civil Procedure Rules*, section 3A of the *Civil Procedure Act* and seeking for orders that the suit be dismissed for want of prosecution and the costs of the suit be awarded to the respondent.
2. The application is supported by the annexed affidavit of Anne Amadi and on the grounds that the claimant has refused, neglected and failed to take any steps to prosecute the matter for a period of more than 24 months since the close of pleadings. The delay is inordinate and inexcusable and the suit is in abuse of the court process. The respondent shall continue to suffer prejudice due to the delay in the prosecution of the suit which should be dismissed with costs.
3. Ms Amadi avers that the claimant filed suit against the respondent on 18th July, 2017 and on 29th September, 2017 the respondent filed a defence and since pleadings closed the claimant has not taken any step to have the matter heard.
4. In reply, the claimant filed her Replying Affidavit and avers that she has been pursuing the matter with requests to be allocated a hearing date without success. In 2019 her advocates wrote a letter seeking allocation of a hearing date. On 28th November, 2020 her advocates wrote an email seeking for allocation of a hearing date. The application by the respondent is misplaced and should be dismissed with costs.
5. Both parties attended and made oral submissions. Determination.



6. The respondent has relied on the provisions of Order 17 and 51 of the Civil Procedure Rules to urge the instant application. However, an application seeking for the dismissal of suit for want of prosecution before this court should be based on the provisions of Rule 16 of the Employment and Labour Relations Court (Procedure) Rules, 2016;
  1. In any suit in which 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 its 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).
7. Once pleadings close, where there is no action taken by either party within one (1) year, the court may issue notice to the parties to show cause why the suit should not be dismissed or either party may apply and seek for the suit be dismissed for want of prosecution.
8. The respondent has moved the court seeking the suit be dismissed for want of prosecution as no action has been taken by the claimant for 24 months.
9. The claimant in reply has attached letter and email dated 28th November, 2020 and a reply thereof that the court was giving priority to matters filed in the year 2016. However, this email and response arose after the fact of this application filed on 4th November, 2020.
10. The claimant was making effort to circumvent the instant application.
11. There is letter dated 7th February, 2019 where the claimant's advocate is inviting the respondent's advocate to attend and fix a hearing date. There is no indication that this letter was served or received by the respondent.
12. Save for these two communications, there is nothing concrete to demonstrate that the claimant is keen to urge her suit.
13. However, in the interests of justice and to ensure the court gives the parties a fair chance to urge their case, the claimant shall be given conditions with regard to the hearing of the suit and failure to which the suit shall be dismissed.
14. The claimant is given the next thirty (30) days to move the court as appropriate and failure to which, the suit shall stand dismissed as at 12th April, 2021. The claimant shall invite the respondent for allocation of hearing dates at the registry.
15. Accordingly, the application dated 4th November, 2020 shall not issue as prayed save the claimant is given 30 days to move the court and failure to which the suit shall stand dismissed on 12th April, 2021. The respondent is awarded costs.

**DELIVERED IN OPEN COURT AT NAIROBI THIS 9TH DAY OF MARCH, 2021.**

**M. MBARŪ**

**JUDGE**

In the presence of: Court Assistant: Okodoi

..... and .....

