



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT KISUMU

APPEAL NO. 22 OF 2019

(Originally Kakamega High Court Civil Appeal No. 31 of 2018)

HUDSON MULUNDA SIMWA.....APPELLANT

VERSUS

WEST KENYA SUGAR FACTORY LTD..... RESPONDENT

(Being an Appeal against the entire Ruling of Evans W. Muleka, Senior Resident Magistrate in Butali SRMCC No. 203 of 2017 delivered on 8th March 2018)

RULING

1. Hudson Mulunda Simwa (the Appellant) sued West Kenya Sugar Factory Ltd (the Respondent) before the Butali Magistrates Court on 14 August 2017 alleging breach of the duty of care/negligence in the course of work. It was pleaded that the cause of action accrued on 13 November 2012.
2. When it was served with the pleadings, the Respondent raised a Preliminary Objection contending that the suit was time-barred as it had been filed outside the prescribed limitation period.
3. The Magistrates Court heard the Objection and in a Ruling delivered on 8 March 2018, he found that the suit and other listed 19 suits were time-barred.
4. The Appellant was aggrieved and he filed a Memorandum of Appeal before the High Court in Kakamega on 4 April 2018.
5. On 25 October 2019, the High Court, citing lack of jurisdiction transferred the Appeal to this Court (the order affected related Appeals listed in the Ruling by the High Court).
6. On 18 December 2019, before the Appeal file was transmitted to this Court, the Respondent filed a Chamber Summons seeking orders:
 - i. **THAT** this Honourable Court be pleased to dismiss the Appeal herein for want of prosecution.
 - ii. **THAT** the costs of this application and the Appeal be awarded to the applicant.
7. When the Appeal was placed before the Court on 21 January 2021, the Appellant was absent/not represented. The Respondent's advocate sought a hearing date for the application.
8. The Court directed the Respondent to serve the application and its submissions upon the Appellant on or before 21 February 2021.
9. The Respondent filed its submissions on 18 February 2021. The Appellant's submissions were not on record by the set timeline of 21 March 2021.
10. The Court has considered the application, affidavit in support and the submissions.
11. The record does not reflect any steps taken by the Appellant to prosecute the Appeal from the date it was filed on 4 April 2018. At the time the Respondent was moving the Court to dismiss the Appeal, nearly 2-years had lapsed.

12. Without any explanation from the Appellant on any challenges he may have encountered in prosecuting the Appeal, the Court finds the delay inexcusable.

13. The Summons dated 11 December 2019 is allowed and the Appeal is dismissed with costs.

DELIVERED THROUGH MICROSOFT TEAMS, DATED AND SIGNED IN NAIROBI ON THIS 21ST DAY OF APRIL 2021.

RADIDO STEPHEN, MCIARB

JUDGE

Appearances

For Appellant Abok Odhiambo & Co. Advocates

For Respondent L.G. Menezes & Co. Advocates

Court Assistant Chrispo Aura