



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**

**CAUSE NO. 911 OF 2017**

**SAMUEL MUTHUVA KATIKU.....1<sup>ST</sup> CLAIMANT/RESPONDENT**

**DENNIS MUTURI NJOROGE.....2<sup>ND</sup> CLAIMANT/RESPONDENT**

**VERSUS**

**TEXAS ALARMS (K) LIMITED.....1<sup>ST</sup> RESPONDENT/APPLICANT**

**RULING**

1. The Respondent/applicant filed notice of motion application on 11/8/2020 seeking for orders:-

(a) That this suit be dismissed for want of prosecution by the claimants.

(b) That costs of this application be provided for.

2. The application is premised on grounds set out in the notice of motion application to wit, that since the institution of the case on the 16th May, 2017, the matter has never been prosecuted and therefore the claimants are not interested in prosecuting their case. The application is buttressed by a supporting affidavit of Perez Odera the advocate on record for the respondent who deposes that it is almost four (4) years since the suit was filed and the claimants have failed to take tangible steps to prosecute the matter.

3. The applicant prays the suit be dismissed accordingly.

4. The respondents filed a replying affidavit of Mutua Muli, the advocate on record for the claimants who deposes *inter alia* that the application is misconceived and an abuse of Court process in that the claim was filed on 16/5/2017 and the respondent filed a defence on 10/7/2017 and thereafter matter was set for pre-trial on 13/11/2017. Both parties attended and the suit was certified ready for hearing. The Court directed parties to take date at the registry.

5. That Mr. Mutua Muli subsequently enquired from the Court registry about availability of hearing dates and he was advised that the registry was not allocating hearing dates for matters filed in the year 2017. The registry officials advised that the claimants await opening of the diary for the year 2018.

6. That the 2018 Diary has since been opened but the Deputy Registrar issued a notice indicating that there were no available hearing dates for matters filed in 2016, 2017 and 2018. The notice was issued on 18/1/2018. That throughout 2018, the registry did not issue hearing dates for matters filed in the year 2017. Accordingly, the claimants could not take steps to have the matter heard.

7. The applicant did not file a further affidavit to traverse the deposition by the claimants' advocate in the replying affidavit. Indeed, the matters deposed to by the advocate for the claimant are within the knowledge of myself as an officer of this Court having been served with the stated notices regarding the status of backlog at the Nairobi Employment and Labour Relations Court and that the Court was not allocating dates for matters

2016, 2017 and 2018 until the parties are notified otherwise.

8. Indeed, there has been no notice to show cause served on the claimant regarding this matter which is a mandatory preliquisite before a matter is dismissed for want of prosecution.

9. Accordingly, this application lacks merit and is dismissed with costs in the cause.

**DATED AND DELIVERED AT NAIROBI THIS 19<sup>TH</sup> DAY OF MAY, 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. Mutua Muli for Claimants/Respondents

M/s Odero and Associate for Respondent/Applicant

Ekale – Court Assistant