



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT & LABOUR RELATIONS COURT OF KENYA**

**AT NAIROBI**

**CAUSE NO. 1324 OF 2018**

**JOSEPH MUTUKU KYALO & 111 OTHERS.....CLAIMANTS**

**VERSUS**

**DEVKI STEEL MILLS LIMITED.....RESPONDENT**

**RULING**

1. The Respondent/Applicant's notice of motion application dated 27<sup>th</sup> April 2021 seeks the dismissal of the Claimants' suit for want of prosecution. It is asserted that the suit was certified ready for hearing on 29<sup>th</sup> May 2019 and has remained inactive since then. The Respondent asserts that it is beyond peradventure that the Claimants have lost any perceivable interest in prosecuting this suit. The Respondent argues that it is Constitutional tenet underpinned by Article 159(2)(b) as read with Section 3 of the Employment and Labour Relations Court Act, 2011 and Rule 16 of this Honourable Court's Rules that justice shall be dispensed without delay.

2. The Claimants on their part assert that they have not lost interest in the claim and that they were unable to fix the matter for hearing as there was a directive by the Court that such cases as the one by the Claimants could not be fixed for hearing as only cases over 5 years were being set down for hearing. The Claimants thus sought the dismissal of the Application and the setting down of the case for hearing.

3. The Claimants claim could well have been dismissed were it not for the fact that there was a directive by the Court that only older cases from 2016 and before were to be fixed for hearing. That must have been of some comfort to parties who were not keen to proceed to have their cases heard. The Respondent though right in asserting that a case that has not been active beyond the period specified in the Rules can be dismissed for want of prosecution is hamstrung by the Court itself which issued the directive that misled the Claimants herein to be lax in the prosecution of their suit. As the real cause of the delay is the directive by the Court, I decline to dismiss the suit and instead order it to proceed for hearing on 5<sup>th</sup> August 2021 before any of the newly appointed ELRC Judges. There shall be no adjournment entertained.

It is so ordered.

**Dated and delivered at Nairobi this 26<sup>th</sup> day of July 2021**

**Nzioki wa Makau**

**JUDGE**