



**REPUBLIC OF KENYA**

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

**CAUSE NO 376 OF 2017**

**MWANAISHA KITAURO.....CLAIMANT**

**VERSUS**

**KWALE INTERNATIONAL SUGAR COMPANY LIMITED.....RESPONDENT**

**RULING**

1. On 10<sup>th</sup> May 2017, the Claimant, through the firm of Omondi Waweru & Company Advocates, filed a claim against the Respondent, seeking compensation for unlawful termination of employment plus terminal dues.
2. The Respondent entered appearance on 12<sup>th</sup> July 2017 and thereafter filed a Reply on 29<sup>th</sup> August 2017.
3. By a notice dated 16<sup>th</sup> July 2018, the Claimant changed Advocates to the firm of Otieno B.N & Associates. Thereafter, the matter was fixed for mention for directions only once.
4. The Respondent therefore filed a Notice of Motion dated 15<sup>th</sup> March 2021, seeking dismissal of the Claimant's claim for want of prosecution.
5. The Motion is supported by an affidavit sworn by the Respondent's Counsel, Moses Njuru and is based on the following grounds:
  - a) The Claimant has refused, neglected and/or otherwise failed to take any steps to prosecute her claim for a period of twelve months;
  - b) The claim is therefore an abuse of the court process;
  - c) The Respondent continues to suffer unnecessary anxiety and serious prejudice due to the intentional, contumelious, inordinate and inexcusable delay in the prosecution of the claim;
  - d) The Respondent is a limited liability company that engages employees, on term contract at different times, and the witnesses are such persons. The prolonged delay has occasioned the Respondent prejudice due to weak evidence resulting from disappearance of human memory as well as witnesses having left employment;
  - e) The Claimant's act of filing a case and subsequently failing, refusing and/or declining to prosecute the same is painting the Judiciary in bad light as it is occasioning unnecessary backlog.
6. In his affidavit in support of the Motion, the Respondent's Counsel, Moses Njuru states that since 27<sup>th</sup> November 2018, the Claimant has refused and/or failed to take any step to prosecute the claim.
7. The Claimant did not respond to the Respondent's Motion, in spite of due service.
8. Order 17 Rule 2 of the Civil Procedure Rules provides as follows:

***(1) In any suit in which no application has been made or step taken by either party for one year, the court may give notice in writing to the parties to show cause why the suit should not be dismissed, and if cause is not shown to its satisfaction, may dismiss the suit.***

***(2) If cause is shown to the satisfaction of the court it may make such orders as it thinks fit to obtain expeditious hearing of the***

*suit.*

***(3) Any party to the suit may apply for its dismissal as provided in sub-rule 1.***

9. From the record, the Claimant has not taken any action towards prosecuting her claim since 2018. What is more, she did not bother to respond to the Respondent's Motion, in spite of due service.

10. In this case, the only conclusion to draw is that the Claimant is no longer interested in the claim. I therefore proceed to dismiss it for want of prosecution.

11. Each party will bear their own costs.

12. Orders accordingly.

**DATED SIGNED AND DELIVERED AT MOMBASA THIS 15<sup>TH</sup> DAY JULY 2021**

**LINNET NDOLO**

**JUDGE**

**ORDER**

In view of restrictions in physical court operations occasioned by the COVID-19 Pandemic, this ruling has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of court fees.

**LINNET NDOLO**

**JUDGE**

Appearance:

No appearance for the Claimant

Mr. Njuru for the Respondent