



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NUMBER 2320 OF 2016

BETWEEN

PETER MACHARIA KAMAU.....CLAIMANT

VERSUS

NATIONAL BANK OF KENYA.....RESPONDENT

RULING

1. The Court fixed this matter for NTSC why the Claim should not be dismissed for want of prosecution, pursuant to Rule 16 of the E&LRC [Procedure] Rules, 2016.
2. NTSC was scheduled for 18th June 2021.
3. The Claimant had as of this date filed, but not served, his Replying Affidavit, sworn on 17th June 2021. He objects to dismissal, explaining delay, and affirming his willingness and readiness to prosecute.
4. The Court directed that the Replying Affidavit is served upon the Respondent. The Respondent subsequently filed its own Affidavit in favour of dismissal, sworn on 20th June 2021, by Acting Director Legal Services Samuel Mundia.
5. The Claimant states that the matter was last mentioned in Court on 30th July 2018. The Respondent was granted leave to amend the Statement of Response before 17th August 2018. The Claimant was granted leave to reply to the Amended Statement of Response, as well as file his Witness Statements and Agreed Issues.
6. Amended Statement of Response was filed on 6th August 2018, and Reply to the Amended Statement of Response, filed on 5th September 2018.
7. The Claimant does not say anything in his Affidavit about Statement of Issues.
8. He explains that there was breakdown in communication between him and his Advocate. Further, he states that he was patiently waiting for documents from the Respondent, in particular, the Management Staff Human Resource Policy. He states that he is desirous of prosecuting the Claim.
9. Mr. Mundia states that the Claim was filed over 5 years ago. The Claimant has been indolent, and failed to list the Claim for hearing. The reasons he advances for delay, are insufficient. He has not accounted for inactivity since 30th July 2018. He has lost interest in his Claim, and failed to follow up with his Advocate. He has not shown that he was pursuing any documents from the Respondent. The Respondent urges the Court to find no reasonable cause has been shown by the Claimant, why the Claim should not be dismissed for want of prosecution.
10. The Court reserved its Ruling for 30th September 2021. However, the Ruling has been completed much earlier than the scheduled date, and the Court has no reason to wait for 30th September 2021. It has directed its Registry to issue notice to Parties, for delivery on the date indicated below.

The Court Finds: -

11. The last action taken by the Claimant in prosecuting his Claim, was filing of Reply to the Amended Statement of Response, on 5th

September 2018.

12. At the time the matter was scheduled for NTSC why the Claim should be dismissed on 18th June 2021, 2 years and 9 months had passed.
13. The Claimant attributes delay to breakdown of communication between him and his Advocates.
14. His Advocates are based at Nairobi. The Claimant's address is P.O. Box 9578-00200 Nairobi. What would it cost the Claimant to visit his Advocates' chambers, and restore communication lines?
15. It is unpersuasive to attribute delay to documents which the Claimant was waiting for, from the Respondent. He wrote to his Advocates when asked to supply certain instructions, alleging he was waiting patiently for a document from the Respondent, to enable him supply instructions.
16. There are ways of obtaining documents from an adversary under rules of procedure. The Claimant did not instruct his Advocates to seek orders compelling production of certain documents from the Respondent. He just sat and waited patiently to be availed documents by his adversary. He has not even shown that he wrote through his Advocates, a letter to the Respondent, requesting for access to any document in the custody of the Respondent. The Respondent filed a bundle of 19 documents way back on 6th August 2018.
17. The reasons advanced by the Claimant for non-prosecution of his Claim for well over 2 years since the last active step taken in Court, are not satisfactory. He has not shown reasonable cause under Rule 16. The Court must enforce the Rule, and protect the Respondent from the ravages of being brought by the Claimant to Court, and being kept there indefinitely.

IT IS ORDERED: -

a. The Claim is dismissed for want of prosecution under Rule 16, E&LRC [Procedure] Rules, 2016.

b. No order on the costs.

Dated, signed and released to the Parties electronically, at Chaka, Nyeri County, under the Ministry of Health and Judiciary Covid-19 Guidelines, this 20th day of August 2021.

James Rika

Judge