

REPUBLIC OF KENYA

IN THE EMPLOYMENT LABOUR RELATIONS COURT AT NAIROBI

MILIMANI COMMERCIAL COURTS

CAUSE NO. 1623 OF 2018

MICHAEL ONYANGO OJWANG.....CLAIMANT/RESPONDENT

VERSUS

FINETJET LIMITED.....RESPONDENT/APPLICANT

RULING

1. The applicant in the application dated 22nd January 2021, prays for the dismissal of the suit for want of prosecution on the grounds that the matter was last in Court on 27th February 2019 for hearing of the respondent's application. That parties filed agreed statement of issues and the claimant did not take any further steps to prosecute the matter. The allegations are buttressed in an affidavit of Juliet Karumba, the advocate for the respondent. The application is opposed vide replying affidavits of Thomas Ochieng Ogola, sworn on 18/5/2021 and replying affidavit sworn on 14/6/2021. The nub of the opposition is that the claimant could not obtain a hearing date for this suit since the Court Registry was not offering dates for suits filed after 2016. That all delays in securing a hearing date in this matter are wholly attributable to factors beyond the claimant's or his advocate's control.

2. That this cause was filed on 19/12/2018, and on the scheme of things considering the backlog of Employment and Labour Relations Court (Nairobi), there has been no inordinate delay to prosecute the suit.

3. That the application lacks merit and it be dismissed.

Determination

4. The Court has considered this matter and in particular that Employment and Labour Relations Court Nairobi, has been issuing hearing dates in respect of matters filed in the year 2016 and 2017. This is now a notorious fact, that this Court does take judicial notice of.

5. The Court is not satisfied that the claimant has willfully and or negligently failed to secure a hearing date for this matter. Indeed, applications of this nature which fail to take into consideration the prevailing back log reality at the Court only help to add to the backlog of the Court by loading judicial officers with extra rulings to make.

6. In the final analysis the applicant has failed to demonstrate that the application to dismiss this suit for want of prosecution has any merit. The same is dismissed with costs in the cause. Hearing date to be allocated for this suit upon delivery of the ruling.

DATED AND DELIVERED AT NAIROBI (VIRTUALLY) THIS 30TH DAY OF SEPTEMBER, 2021.

MATHEWS N. NDUMA

JUDGE

Appearances

MMW & company Advocates for the Respondent/Applicant

Ochieng Ogola & Co. Advocates for Claimant/Respondent

Ekale – Court Assistant