



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT MOMBASA

CAUSE NO 650 OF 2017

SALIM TWAIRI.....CLAIMANT

VS

KWALE INTERNATIONAL

SUGAR COMPANY LIMITED.....RESPONDENT

RULING

1. This ruling relates to the Respondent's Notice of Motion dated 15th March 2021, seeking dismissal of the Claimant's claim for want of prosecution.

2. 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 his 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.

3. In his affidavit in support of the Motion, the Respondent's Counsel, Moses Njuru states that since close of pleadings, the Claimant has refused and/or failed to take any step to prosecute the claim.

4. The Claimant did not respond to the Respondent's Motion, in spite of due service.

5. Order 17 Rule 2 of the Civil Procedure Rules provides that:

(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.

6. The Claimant filed his claim on 4th August 2017 and the Respondent filed its Reply on 30th November 2017. Thereafter, the Claimant took no action towards prosecuting his claim. Moreover, the Claimant did not bother to respond to the Respondent's Motion, in spite of due

service.

7. The only conclusion to draw therefore, is that the Claimant is no longer interested in pursuing the claim. I therefore proceed to dismiss it for want of prosecution.

8. Each party will bear their own costs.

9. Orders accordingly.

DATED SIGNED AND DELIVERED AT NAIROBI THIS 30TH DAY SEPTEMBER 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. Kulecho for the Respondent