



**REPUBLIC OF KENYA**

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

**AT NAIROBI**

**CAUSE NO. 185 OF 2018**

**EDWARD MBALANYA KAFUNA.....CLAIMANT/RESPONDENT**

**VERSUS**

**IDEAL SECURITY SERVICES LTD.....RESPONDENT/APPLICANT**

**RULING**

1. The Respondent/Applicant filed a notice of motion application dated 26<sup>th</sup> November, 2020 in which the applicant prays that the suit herein be dismissed for want of prosecution as the Claimant/Respondent has made no steps to prosecute the suit.
2. The applicant states in the grounds set out in the Notice of Motion and supporting affidavit that the suit was filed on 5<sup>th</sup> February, 2018. A statement of defence dated 13<sup>th</sup> March, 2018 was filed and that the claimant has failed and or neglected to take necessary steps towards final determination of the suit in that no hearing date has been set since, hence the suit be dismissed for want of prosecution.
3. The claimant filed a replying affidavit opposing the application and states he has taken steps to prosecute the matter. That on 21<sup>st</sup> November, 2018, the suit was fixed for mention and the advocates on record in the year 2019, visited the Court registry on numerous occasions only to be advised by the Court officials that there were no dates available and that the claimant should await the opening of the diary for the issuance of a hearing date.
4. That on 13<sup>th</sup> March, 2020, the advocates for the claimant wrote to the Deputy Registrar requesting for a mention date. The letter is attached. Again on 9<sup>th</sup> February, 2021, the advocate wrote an email requesting for a mention date. The email is attached to the replying affidavit.
5. The claimant deposes that he has been advised by his advocates that it has been difficult to access the registry since the COVID – 19 pandemic started in 2020.
6. The applicant did not file a supplementary affidavit to challenge the facts set out in the replying affidavit by the claimant.
7. The Court is satisfied that the claimant made reasonable steps to progress the suit but was unable to get a mention date and a hearing date for the hearing and determination of the suit.
8. In any event, the Court is aware and takes judicial notice that due to the backlog of cases at Nairobi, Employment and Labour Relations Court, the Court has not been allocating hearing dates for matters filed in the year 2018. The Court is still expediting hearing and determination of suits filed between the year 2016 and 2017 to date.
9. The application by the respondent is devoid of merits. It cannot be said as was held in **Utalii Transport Company Limited and 3 Others –vs- NIC Bank & Another [2014] eKLR** that the claimant is guilty of indolence and willful neglect or failure to take steps to have the suit heard and determined.
10. The application is dismissed for lack of merit and the suit to be set down for hearing on the merits on the date of delivery of this ruling.

**DATED AND DELIVERED AT NAIROBI (VIRTUALLY) THIS 16TH DAY OF SEPTEMBER, 2021.**

**MATHEWS N. NDUMA**

## **JUDGE**

### **Appearances:**

Okongo Omogeni & Co. Advocates for the Applicant

Karanja and Partners Advocates for the Respondent

Ekale – Court clerk