



REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS COURT OF KENYA

AT NAIROBI

CAUSE NO 1341 OF 2018

HELLEN MWENDWA GACHU.....CLAIMANT

VERSUS

METHODIST CHURCU IN KENYA.....1ST RESPONDENT

METHODIST CHURCH IN KENYA REGISTERED TRUSTEES.....2ND RESPONDENT

RULING

1. The Claimants brought this suit on 29.8.2018 seeking declaration that her employment contract was unfairly terminated and prayed for payment of terminal benefits plus compensatory damages. The respondent filed defence on 3.10.2018 denying the alleged unfair termination and the claim for terminal benefits.

2. The claimant allegedly failed to take steps towards prosecuting the suit and the respondent filed application dated 13.7.2020 seeking for order that the suit was dismissed with costs for want of prosecution or because it discloses no reasonable cause action against the respondent. The application is supported by the affidavit sworn on even date by the respondent's Counsel Mr. Henry M. Narangwi where he contends that the claimant has failed to fix the suit for hearing for no good reason. In his view the delay in prosecuting the suit is unreasonable, prejudicial to the respondents and shows that the claimant has lost interest in the suit. Finally, he contended that the delay has not been explained and as such the suit ought to be dismissed with costs for want of prosecution.

3. The claimant opposed the application vide the Grounds of opposition dated 5.5.2021 where she blames the delay in prosecuting the suit on Covid-19 situation which seriously affected her former Counsel forcing her to appoint a new counsel to fast-track the suit. She urged for the suit to be determined on merits in the interest of justice.

4. I have carefully considered the materials presented to the court in respect of the instant application. The issue for determination:

- a) Whether the suit should be dismissed for want of prosecution.
- b) Whether the suit discloses no reasonable cause of action against the respondents.

Dismissal for want of prosecution

5. Rule 16(1) & (3) of the ELRC procedure Rules provides that: -

“In any suit in which no application has been made in accordance with Rule 15 is or action has been taken by either party within one year from the date of its filing the court give notice in writing to the parties to show cause why the suit should not be dismissed and if no reasonable cause is shown to its satisfaction may dismiss the suit.

(3) Any party to the suit may apply for dismissal as provided in paragraph (1)”

6. The Claimant has denied being indolent in this matter and averred that the reason he could not fix the matter for hearing was because her former counsel was affected by the novel Covid-19 Pandemic. The respondent does not consider the said explanation as reasonable for the delay of 2 years without setting the suit down for hearing.

7. I have also perused the court record to see whether the claimant was indolent. I have noted letter dated 25.9.2019 received by the Court on 26.9.2019, and another letter dated 4.11.219 and received by the court on 5.11.2019. The said letters were written by the claimants former

counsel seeking for date for Pre-trial directions but no response was given by the Court. I would therefore not condemn the claimant for being indolent or as having lost interest in the matter. She sought for a date but the court did not give any.

8. It must be noted that the problem of getting hearing dates for matters filed after 2016 in ELRC Milimani is a matter of public notoriety. There has been a backlog of cases in the court registry due to the small number of judges to handle the ever increasing suits. The said problem was exacerbated by the Covid-19 situation that has adversely affected the administration of justice in the country. Consequently, I do not blame the claimant for the delay in prosecuting the suit in circumstances.

9. There cannot be any doubt that delaying trial would be prejudicial to the respondents who continue to bear the yoke of suit around its neck for years and stand the risk of losing crucial evidence should its witnesses leave employment. However, the prejudice of delayed hearing cannot in any way be equated with dismissal of a suit because that means the claimant is forever banished from the seat of justice.

Whether no reasonable cause of action has been disclosed.

10. As regards the alternative prayer that the suit does not disclose cause of action, the respondents did not prosecute that allegation. The supporting affidavit and the written submissions are conspicuously silent on that issue and consequently, I decline to grant the order that the suit does not disclose a reasonable cause of action.

11. Having considered all the circumstances of the case, I find that the application by the respondent has no merits, and the precedents cited in support thereof are not relevant to the facts of this case. Consequently, I dismiss it with no costs with directions that the suit will now be mentioned before the Deputy Registrar on 9.11.2021 for fixing of a hearing date.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 15TH DAY OCTOBER, 2021.

ONESMUS N MAKAU

JUDGE

ORDER

In view of the declaration of measures restricting court operations due to the Covid-19 pandemic and in light of the directions issued by his Lordship, the Chief Justice on 15th April 2020, this ruling has been delivered to the parties online with their consent, the parties having waived compliance with Rule 28(3) of the ELRC Procedure Rules which requires that all judgments and rulings shall be dated, signed and delivered in the open court.

ONESMUS N. MAKAU

JUDGE