



REPUBLIC OF KENYA



**KENYA LAW**  
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**Wagikuyu v Summer Millers Limited (Cause 2099 of 2015)  
[2021] KEELRC 2415 (KLR) (15 October 2021) (Ruling)**

*Veronica Wagikuyu v Summer Millers Limited [2021] eKLR*

Neutral citation: [2021] KEELRC 2415 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**

**CAUSE 2099 OF 2015**

**J RIKA, J**

**OCTOBER 15, 2021**

**BETWEEN**

**VERONICAH WAGIKUYU ..... CLAIMANT**

**AND**

**SUMMER MILLERS LIMITED ..... RESPONDENT**

**RULING**

1. The Claim herein was dismissed for want of prosecution on 28<sup>th</sup> January 2019.
2. It was filed on 30<sup>th</sup> November 2015.
3. The Respondent filed its Statement of Response on 14<sup>th</sup> January 2016.
4. On 3<sup>rd</sup> December 2019, close to a year after dismissal, the Claimant presented an Application for reinstatement of the Claim. Her prayer is that, “ the Hon. Court be pleased to set aside the orders of Justice Byram Ongaya made on 28<sup>th</sup> January 2018...”
5. The Application is founded on the Affidavit of the Claimant, sworn on 2<sup>nd</sup> December 2019.
6. She explains that on 28<sup>th</sup> January 2019, [not 28<sup>th</sup> January 2018], the matter came up before Hon. Justice Ongaya and was dismissed for want of prosecution. She was sick and could not attend Court. She alleges that she had been attending Court whenever the Claim was scheduled for hearing. No specific date or dates when she attended Court are mentioned.
7. The Respondent opposes the Application through the Replying Affidavit of Human Resource Manager Ezekiel Adagi, sworn on 16<sup>th</sup> February 2021. He states that the Claimant did not provide evidence of her illness on the date scheduled to attend Court. The Claimant did not take active steps between 14<sup>th</sup> January 2016 and 28<sup>th</sup> January 2018 [restates the date given by the Claimant] to prosecute



the Claim. She similarly delayed in presenting her current Application for reinstatement of the Claim by 1 year and 11 months.

8. It was agreed on 10<sup>th</sup> June 2021 that the Application is disposed of through Written Submissions. These were confirmed to have been filed and served, at the last mention in Court on 30<sup>th</sup> September 2021. Ruling was reserved for 17<sup>th</sup> November 2021 but is ready for delivery on the date indicated and notified to the Parties below.

**The Court Finds: -**

9. The record does not show that there was an order for dismissal of the Claim, made by Hon. Justice Byram Ongaya, on 28<sup>th</sup> January 2018. There is no order made by the said Judge on the date stated in prayer 1 of the Notice of Motion dated 2<sup>nd</sup> December 2019, filed by the Claimant, seeking reinstatement of her Claim.
10. The record indicates that the Claim was before Hon. Justice Joram Abuodha on 28<sup>th</sup> January 2019, who recorded that: no appearance by the parties, suit dismissed for want of prosecution.
11. The Respondent filed its Statement of Response on 14<sup>th</sup> January 2016. There was a period of 3 years running up to 28<sup>th</sup> January 2019, when the Claimant took no steps to prosecute her Claim. On the material day, 28<sup>th</sup> January 2019, she did not present herself before the Court. She does not allege to have been sick for the period of 3 years of inaction.
12. There is no medical evidence showing that the Claimant suffered illness that would disable her from attending Court on the 28<sup>th</sup> January 2019. She exhibited what she says is medical attendance document, conveniently dated 28<sup>th</sup> January 2019. It is not clear which facility or doctor attended to her. The nature of illness is not clear on the document. It is not stated that the Claimant was under any bed rest, which would justify her non-appearance before the Court. She did not write to the Court or communicate in advance in any other way, that she was scheduled to see a doctor on 28<sup>th</sup> January 2019.
13. In her Submissions, she repeats the assertion that she was ailing, when the matter came up before Justice Byram Ongaya. Without placing any blame on herself, she submits that the Claim had dragged for many years and that she faced unspecified challenges. She also describes herself as an indigent Kenyan. All this is unhelpful and does not explain delay.
14. She submits on rules of civil procedure on dismissal of suits for want of prosecution, while the applicable procedural regime to the Claim, is the [E&LRC \[Procedure\] Rules, 2016](#).
15. The Claimant has not given the Court any reason to warrant reinstatement of the Claim. There was delay at every turn in the proceedings. Even her Application for reinstatement was made after a considerable interval.

It is ordered: -

- a. The Application filed by the Claimant dated 2<sup>nd</sup> December 2019 is declined.
- b. No order on the costs

**DATED, SIGNED AND RELEASED TO THE PARTIES ELECTRONICALLY, AT NAIROBI, UNDER MINISTRY OF HEALTH AND JUDICIARY COVID-19 GUIDELINES, THIS 15<sup>TH</sup> DAY OF OCTOBER 2021.**

**JAMES RIKA**

**JUDGE**

