



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAKURU

ELRC CAUSE NUMBER 138 OF 2016

SUSAN KHAGALI.....CLAIMANT

-VERSUS-

MUTUNGATI FARMERS CO-OPERATION.....RESPONDENT

(BEFORE HON. JUSTICE DAVID NDERITU)

RULING

1. On 27th September, 2021 the court issued a Notice to show cause (NTSC) why this suit should not be dismissed for want of prosecution. The said notice was slated for hearing on 14th October, 2021 and the same was served upon counsel for both parties via email addresses provided to court.
2. On the date of hearing, 14th October, 2021 neither party appeared and the court proceeded to deal with the Notice to show cause noting, *inter alia*, that the matter had been pending in court since 2016 and that the last time that the matter was in court was on 21st July, 2020 when neither party appeared for hearing on that date. This court proceeded and dismissed the cause for want of prosecution with no orders as to costs.
3. It is that ruling of the court in the preceding paragraph that the Claimant/Applicant is seeking to set aside vide a Notice of Motion dated 14th October, 2021.
4. The said Notice of Motion is supported by an affidavit sworn by JACINTA MOENGA, learned counsel for the Claimant/Applicant. There are two annexures to the said supporting affidavit.
5. Counsel for the Claimant/Applicant argues that she was unable to join the court on 14th October, 2021 due to confusion arising from two virtual links shared out by the court registry. It is deponed in the supporting affidavit that the Claimant/Applicant is now ready and willing to prosecute this cause.
6. The application is opposed and DAVID N. IKUA, Advocate, has sworn a replying affidavit on 13th November, 2021 in opposition wherein he sets out the history of this cause and events that he argues demonstrate that the Claimant/Applicant was never ever ready to prosecute this cause.
7. In particular the Respondent rightly argues that even by 14th October, 2021 when the notice to show cause was coming up for hearing, the Claimant/Applicant had not filed any response thereto. It is also alluded that the Claimant/Applicant had variously applied to amend the claim yet no action has been taken.
8. It is also disputed that there has been any attempts on an out of court settlement.
9. When the Notice of Motion came up for hearing on 22nd November, 2021 counsel on both sides left it to the court to determine the same based on the materials filed.
10. Although this court notes that the Notice of Motion was filed without delay on 18th October, 2021 the cause having been dismissed on 14th October, 2021 this court expresses displeasure at the delay on the part of the Claimant/Applicant in prosecuting this matter. There are no good reasons given for the delay and as such there is no cause shown why the matter should not have been dismissed for want of prosecution on 14th October, 2021.

11. It is also amazing that counsel for the Claimant/Applicant alluded to attempts of an out of court settlement while counsel for the Respondent categorically states that he is not aware of such attempts. Advocates are officers of court and as painful as it is, this court has to state that one of the counsel is not forthright in their respective affidavits.

12. Rule 16 of the rules of this court gives this court powers to dismiss a cause for want of prosecution. However, this court derives no pleasure in dismissing matters as such. However, when a party files a cause in court the same should be prosecuted in a timely, expeditious, efficient, proportionate, just, and fair manner.

13. Section 1A(3) of the Civil Procedure Act (Cap 21) enjoins parties and counsel in a cause to assist the court in facilitating a just, expeditious, proportionate, and affordable resolution of such disputes. I do not think counsel for the Claimant/Applicant has done all that she can and should be done to bring this matter to a logical conclusion.

14. Section 3(1) and (3) of the Employment and Labour Relations Court Act No.20 of 2011 echoes the provisions **of Section 1A(3) of the Civil Procedure Act** noted above, and officers of court are duty bound to ensure that matters in court are disposed of in accordance with the principles alluded to above.

15. This cause has been pending in court since 2016, for over five (5) years. This delay can neither be described as fair, just, expeditious, nor efficient.

16. Were it not that there is no clear account on how the Claimant/Applicant has personally contributed to the delay, this court would have proceeded to dismiss this application.

17. However, for the sake of the Claimant/Applicant, who may be innocent or completely oblivious of the going-ons in this matter, this court, albeit very reluctantly, allows this application and reinstates this cause and orders that the same be heard on priority basis and without adjournment of the same.

18. The Respondent is awarded costs of the said application.

DATED AND DELIVERED VIRTUALLY AT NAKURU THIS 29TH DAY OF NOVEMBER, 2021

.....

DAVID NDERITU

JUDGE