



**REPUBLIC OF KENYA**

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

**AT NAIROBI**

**CAUSE NO. 157 OF 2019**

**CHRISPINE OTIENO SIAJI.....CLAIMANT**

**VERSUS**

**CRAFT SILICON LIMITED.....RESPONDENT**

**RULING**

1. The Application before me is the Respondent's Notice of Motion expressed to be brought under Section 3 of the Employment and Labour Relations Court Act, 2011; Rule 16 of the Employment and Labour and Relations Court (Procedure) Rules, 2016; Section 1A; 1B and 3A of the Civil Procedure Act, Cap 21 and Order 51 Rule 1 of the Civil Procedure Rules 2010 and all other enabling provision of the law. Through it, the Respondent seeks for Orders:

- 1) THAT this Honourable Court be pleased to dismiss the Claimant's Suit against Respondent for want of prosecution.
- 2) THAT the Cost of this Application be in the Cause.

The motion was supported by grounds on the face of the Application as well as the supporting affidavit of Stella Wangui Muraguri Advocate. She asserts that it has been in excess of one (1) year and six (6) months since the Claimant took any step towards the determination of his Claim or made an Application within this Cause and that the Claimant's inordinate delay in prosecuting this Cause has gravely prejudiced the Respondent by subjecting it to superfluous litigation without end as a means of fulfilling a personal vendetta. She deponed that consequently, the Claimant's delay is: -

- a. Intentional, contumelious, inordinate and inexcusable;
- b. An abuse of the Court process;
- c. Gives rise to substantial risk of an unfair trial;
- d. Gravely prejudicial to Respondent's right to an expeditious trial; and
- e. Contrary to the interest of justice.

She asserts that the Claimant has clearly lost interest in the prosecution of this Cause and in the absence of any reasonable justification, the Claimant's claim ought to be dismissed in its entirety. She further deponed that this Honourable Court should not be used as a medium for prolonged retaliatory acts and is well endowed with jurisdiction to dismiss the Claimant's Claim on account of the Claimant's inexcusable inactivity for a period of over one (1) year and four (4) months. She thus urges the grant of the motion with costs to the Respondent/Applicant.

2. The Claimant/Respondent was opposed and filed a replying affidavit sworn by Aggrey Odiwuor Kenyatta Advocate. In brief the affidavit asserts that the COVID 19 global pandemic necessitated restructuring of the Court's logistical and operational modules, significantly reducing the volume of work the Courts were handling, with the introduction of online Court sessions. He deposed that suffice to say, the Employment and Labour Relations Court has not been issuing hearing dates for 2019 matters, in their quest to finish up on the backlog of earlier years cases and that indeed by the Applicant's own admission, the Respondent attempted to fix a hearing date for this matter on the 27<sup>th</sup> May and 12<sup>th</sup> June 2019 but was instead advised by the Registry that only 2016 matters were being fixed for hearing. He stated that the Claimant does not have control over the over the administrative decision of the Courts and cannot in any way influence the same for the matter to be set down for hearing against the clear guidelines and directions given by the court on the hearing of matters before it. He thus urged the dismissal of the motion.

3. The Application indicates that the case has been dormant for over 1 year 6 months. In defence, the Claimant asserts that the delay has not been deliberate but that the failure to set down the case is on account of the inability to obtain dates for 2019 matters as the Registry has given directives on the age of cases to be given priority in hearing. As can be gleaned from the motion the Respondent/Applicant has been proactive and has tried to fix the case on two occasions without success. The reason is that the Registry had indicated the unwillingness to set down slightly younger cases for hearing. As such the delay in this case is neither intentional, contumelious, inordinate or inexcusable. In my surmise, it is not an abuse of the Court process nor does it give rise to substantial risk of an unfair trial. As the case is not delayed on account of deliberate inactivity by the Claimant it shall be listed for mention to confirm compliance and eventually a hearing date to be fixed. Due to the anxiety the Respondent Applicant expresses this should be done within the next 2 weeks before any other Judge of ELRC Nairobi. By way of obiter, it is unfortunate that the cases post 2016 were not prioritized since in my view to ensure there is no undue delay there must be a mix of cases both new and old to ensure the new cases are not automatic backlog by the time the Court reaches them for hearing. The Court notes there is need to share best practices that were implemented in Nyeri ELRC courtesy of my Court Assistants Mr. Mugambi and Mr. Odinga who had calculated the formula of the mix of cases that need to be on the cause list to ensure you clear the backlog as you also dig into the incoming new cases.

It is so ordered.

**DATED AND DELIVERED AT NAIROBI THIS 23RD DAY OF NOVEMBER 2021.**

**NZIOKI WA MAKAU**

**JUDGE**