



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO 1317 OF 2016

KENYA NATIONAL PRIVATE SECURITY WORKERS UNION.....CLAIMANT

VERSUS

LAVINGTON SECURITY LIMITED.....RESPONDENT

RULING

1. By its Notice of Motion dated 20th May 2021, the Respondent seeks dismissal of the Claimant's claim for want of prosecution.
2. The Motion is supported by an affidavit sworn by the Respondent's General Manager, Raymond Koech and is based on the following grounds:
 - a) That more than twelve months have elapsed since the matter was last listed for hearing and the Claimant has not taken any positive step to prosecute it;
 - b) That the Claimant's delay or failure to withdraw or set down the suit for hearing is inordinate, inexcusable and an abuse of the court process;
 - c) That it is just and fair that the Respondent be relieved of the burden of litigation since the Claimant has lost interest in the matter.
3. The Claimant's response to the Respondent's application is by way of Replying Affidavit sworn by its National General Secretary, Isaac G.M. Andabwa on 13th October 2021.
4. Andabwa assigns the delay in prosecuting the matter to the Claimant's Advocate.
5. Andabwa further states that the Claimant had been informed at the Court Registry that there were no hearing dates.
6. The provision for dismissal of cases for want of prosecution before this Court, is found in Rule 16 of the Employment and Labour Relations Court (Procedure) Rules which states:
 - (1) In any suit in which no application has been made in accordance with Rule 15 or no action has been taken by either party within one year from the date of its filing, the Court may 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.***
 - (2) If reasonable cause is given to the satisfaction of the Court, it may make such orders as it thinks fit to obtain expeditious hearing and determination of the suit.***
 - (3) A party to the suit may apply for dismissal as provided in paragraph (1).***
 - (4) The Court may dismiss the suit for non-compliance with any direction given under this rule.***
7. According to this provision, a party facing an application for dismissal of their claim for want of prosecution must lay before the Court reasons for the delay.
8. As held by **Omondi J** (as she then was) in **Wargan Wekesa Okumu v Dima College Limited & 2 others [2015] eKLR** once delay in prosecuting a matter is established, it must be well explained and if it is not explained, then it becomes inexcusable.

9. The Claimant filed its claim on 4th July 2016 and the Respondent filed its Defence on 21st July 2016. Thereafter, the matter came up severally with no appearance for either party. From the record, it is evident that the Claimant did not pursue its claim as required.

10. In his Replying Affidavit sworn on 13th October 2021, the Claimant's National General Secretary, Isaac G.M. Andabwa expresses surprise that no action had been taken to prosecute the matter. Andabwa goes ahead to blame the Claimant's Advocate for this lapse.

11. A party who comes to court bears the primary responsibility to progress the matter towards conclusion. Cases that lie dormant in court clog the system and expose the opposite party to unnecessary anxiety and prejudice.

12. The Claimant cannot pass the buck to its Advocate. The Respondent's Motion dated 20th May 2021 is consequently allowed and the Claimant's claim is dismissed for want of prosecution.

13. Each party will bear their own costs.

14. Orders accordingly.

DELIVERED VIRTUALLY AT NAIROBI THIS 11TH DAY OF NOVEMBER 2021

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JUDGE

Appearance:

MISS WANYAMA FOR THE CLAIMANT

MR. KIPTOON FOR THE RESPONDENT