



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NUMBER 1668 OF 2016

JOSIA OBIKO OMBOGO.....CLAIMANT

- VERSUS -

NIDE SERVICES LIMITED.....RESPONDENT

RULING

1. On the 29th September 2021, this matter came up before me for notice to show cause why it should not be dismissed for want of prosecution. Counsel for the Claimant indicated to court that he had filed a detailed affidavit demonstrating why the matter was not set down for hearing until the Court fixed it for the notice to show cause, and therefore making this matter an unfit candidate for dismissal for want of prosecution. The affidavit was sworn on the 4th June 2021, by Aloyse Wangira Okoba.
2. The Respondent's counsel indicated that his client was keen in supporting the move to have the matter dismissed for want of prosecution, upon basis of the grounds of opposition filed.
3. According to the Claimant, this matter was filed on the 22nd August 2016 through a memorandum of claim. Subsequently summons to enter appearance were served on the Respondent, who through its counsel entered appearance on the 9th day of September 2016 and filed a statement of response on the 28th September, 2016.
4. That through a letter dated 27th May 2017, CUS- 3, counsel for the Claimant invited the Respondent's counsel to the registry for purposes of picking a mutually convenient hearing date for the matter. The letter was received by the court on the 18th September 2016.
5. The Claimant stated that on the 7th November,2017, they served the Respondent with a hearing notice dated 6th November 2016, Annexure CUS-4.
6. The matter had been fixed for hearing for the 14th November 2018, however on this day, it by mistake got cause listed as coming up for mention before the Deputy Registrar. Both counsels appeared before the Registrar and by consent fixed the matter for the 19th February 2019, for purposes of checking on compliance and for picking a hearing date.
7. On the stated date, the matter was placed before the Deputy Registrar, the Respondent was absent. The Respondent had not complied with the pre-trial procedural aspects. The Deputy Registrar got constrained to direct that the matter be returned to the registry where at a date for hearing could be picked.
8. The Claimant states that on the 27th September 2016 his counsel received a letter from counsel for the Respondent, letter intimating the Respondent's desire that an out of court settlement be attempted. To this letter, the Claimant's counsel intimated the Claimant's willingness to an out of court negotiation. The last correspondence on this attempted negotiation was the Claimant's letter dated the 26th April 2016.
9. It was asserted that in 2020, the COVID -19 pandemic slowed down the process of having the matter listed down for hearing. On the 5th May 2021 the Claimant's counsel wrote to the Deputy Registrar of this Court requesting for a hearing date, only to be told by the registry that the matter had been slated for notice to show cause.
10. The Claimant further states that for the wider interest of justice, this Court should allow the matter to be heard on merit. That the Respondent won't suffer any prejudice if the Court so allowed.
11. The factual contents of the replying affidavit are unchallenged. The contents are largely in agreement with the court record. A court of

justice looking at the same will conclude that the Claimant is a party who did not go sleeping, he has all through demonstrated keenness to have the matter proceeded with, and taken steps geared towards achieving this. In the circumstances of this matter, to dismiss the same on an account of want of prosecution shall be tantamount to sacrificing substantive justice at the altar of procedural justice.

12. This Court is consequently of the view that the Claimant has shown sufficient cause why the matter should not be dismissed for want of prosecution. The Claimant is given a last chance to have his day in court. The matter shall be mentioned on the 20th December 2021 with a view of fixing it for hearing.

13. Orders accordingly.

READ, DATED AND DELIVERED ON THIS 5TH DAY OF NOVEMBER, 2021

OCHARO KEBIRA

JUDGE