



REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS COURT

AT MOMBASA

CAUSE NO. 511 OF 2016

BONIFACE ONGARI OSUSO.....CLAIMANT

VERSUS

NEPTUNE HOTELS LIMITEDRESPONDENT

RULING

1. The claim herein was instituted on 22/6/2016 vide a Memorandum of Claim dated 20/6/2016. The Respondent's Response to Claim was filed on 16/12/2016.
2. The Court's record shows that hearing of the suit was on 16/7/2018 adjourned at the instance of the Claimant, and that the Claimant was ordered to pay the Respondent's costs agreed at ksh.5,000. The matter was then fixed for mention on 18/12/2018, a date on which no proceedings are shown to have been taken.
3. Thereafter, and for a period exceeding two and a half years, the Claimant did not take any step to prosecute his suit.
4. On 23/6/2021, the Court issued a written notice under Rule 16 of the Employment and Labour Relations Court (Procedure) Rules, 2016, calling upon the parties herein to attend Court on 14/7/2021 and show cause why the suit could not be dismissed for want of prosecution. On 14/7/2021, parties were directed by the Court to file responses to the Notice to Show Cause.
5. On 27/7/2021, the Claimant filed a Replying Affidavit in response to the Notice to Show Cause. The Claimant has not given any valid reason as to why he did not, for over two and a half years, prosecute or even make an attempt to prosecute his suit. He has not shown any reasonable cause why the suit should not be dismissed for want of prosecution. Rule 16(1) of the Employment and Labour Relations Court (Procedure) Rules 2016 provide:-

“in any suit where 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.”

6. It is my finding that no reasonable cause has been shown. Consequently, and as rightly urged by the Respondent in the Replying Affidavit of **Joseph Karanja Kanyi sworn on 4/8/2021** and filed in Court on 5/8/2021, I hereby dismiss the Claimant's suit for want of prosecution. No orders as to costs.

DATED, SIGNED AND DELIVERED AT MOMBASA THIS 4TH DAY OF NOVEMBER 2021

AGNES M.K. NZEI

JUDGE

ORDER

In view of restrictions on physical Court operations occasioned by the COVID-19 Pandemic, this ruling has been delivered via Microsoft Teams Online Platform. A signed copy will be availed to each party upon payment of Court fees.

AGNES M.K. NZEI

JUDGE

Appearance:

Mr. Mkomba for Claimant

No appearance for Respondent