



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI

CAUSE NO.983 OF 2017

KENYA SHIPPING CLEANING AND WAREHOUSES

WORKERS UNION..... CLAIMANT

VERSUS

VEGPRO (K) LIMITED 1ST RESPONDENT

KENYA UNION OF COMMERCIAL FOOD AND

ALLIED WOKERS2ND RESPONDENT

RULING

The claimant, Kenya Shipping and Warehouses Workers Union filed application dated 22nd October, 2021 and seeking for orders that the court is pleased to set aside orders issued on 18th October, 2021 dismissing the suit and the same be reinstated and listed for hearing.

The application is supported by the annexed affidavit of Samson Ongera the National Organising Secretary and on the grounds that the claimant filed suit dated 29th May, 2017 on equal dated and which was dismissed on 18th October, 2021 for want of prosecution. The matter was never listed for show cause as to why it should be dismissed and the allegations by the 1st respondent that the claimant had refused to appear in court and file an affidavit as to why the suit should not be dismissed for want of prosecution was misleading as the claimant was never served with any notice to show cause.

The claimant union has a good case and should be heard on the merits.

Mr Ongera in his affidavit avers that on 18th October, 2021 this matter came up for mention and then dismissed for want of prosecution amid protests from the claimant that they had not been served with any notice to show cause. The claimant has made numerous efforts to fix the matter for haring but due to COVID pandemic effects and court operations being downscaled it was not humanly possible to attend court and take hearing dates.

Upon perusal of the file the claimant learnt that the Deputy Registrar mentioned the matter on 23rd July, 2021 for directions on the hearing and mention allocated for 28th September, 2021 and another for 18th October, 2021 when the matter was dismissed.

The claimant was never served with notices and the Affidavit of Service filed indicating service upon the claimant was not to the email address of the claimant. Notice was sent to kscwwunbi@gmail.com and to kufaw16@gmail.com whereas the claimant's email address is kschfwu@gmail.com and no notice was received on such address.

No notice to show cause has ever been served upon the claimant pursuant to section 16 of the Employment and Labour Relations Court (Procedure) Rules.

In reply, the 1st respondent filed the Replying Affidavit of John Matanyi the Human Resource manager and who avers that a suit is dismissed for want of prosecution where a party fails to move the court diligently and no reasonable explanation is given for failure to move the court and have the matter prosecuted.

The claimant filed suit on 29th May, 2017 and has since not taken any steps to prosecute the matter and leading to the court issuing notices to the parties to attend and taken hearing date when the claimant failed to attend on 28th September, 2021. The claimant we served with notice through kswunbi@gmail.com and through kufaw16@gmail.com and on 18th October, 2021 the claimant's representative was in court and was allowed a hearing by the court.

The court properly dismissed the suit as the claimant had no good cause as to why they had failed to attend and prosecute it. the application is in abuse of court process and should be dismissed with costs.

The claimant and 1st respondent filed written submissions which have been put into account and the single issue for determination I whether the orders of 18th October, 2021 dismissing the suit herein should be set aside and the suit reinstated.

On 18th December, 2019 the court delivered ruling herein following an application filed by the claimant dated 29th May, 2017 which was filed together with the Memorandum of Claim. The respondent had also filed a Notice of Preliminary Objections dated 1st October, 2017 which the court addressed in the ruling.

Since such ruling the claimant has not taken any step to prosecute the matter until the instant application.

On 21st July, 2021 the court issued notice to the parties to attend for directions and only the 1st respondent was in attendance. Another mention date was allocated for 28th September, 2021 and only the 1st respondent attended and the court directed parties to attend on 18th October, 2021 for the claimant to show because why the suit should not be dismissed for want of prosecution. Such order is within the provisions of Rule 16 of the Employment and Labour Relations Court (Procedure) Rules, 2016;

16. (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.

The court on its own motion is allowed to issue notice to the parties to show because why suit should not be dismissed for want of prosecution.

On 18th October, 2021 the claimant's representative was in attendance and submitted that he was not aware of the purpose of the mention as he had not been served with notice.

It is not in dispute that the 1st respondent notice to the claimant was through kswunbi@gmail.com and through kufaw16@gmail.com as confirmed in the Replying Affidavit of John Matanyi.

I have perused the record and retried the claimant's letter dated 3rd March, 2018 and therein note their address is kscwwu@yahoo.com;

In a letter dated 3rd October, 2017 the email address is the same kscwwu@yahoo.com;

In a letter dated 20 August, 2018 the same address is noted;

On 12th July, 2021 the court issued notice to the parties to attend at the registry for allocation of a hearing date through the claimant's address kscwwu@yahoo.com and the 1st respondent through the address okweh_achiando@yahoo.com.

Only the 1st respondent attended.

A similar notice issued to the claimant through the 1st respondent as directed by the court on 28th September, 2021 through the address on record at kscwwu@yahoo.com

Save for the claimant to urge the court that the address of kswunbi@gmail.com and through kufaw16@gmail.com do not belong to them, nothing is noted and said as concerns the address kscwwu@yahoo.com

This is the noted address used by the court registry and through which the claimant has severally been served.

Even where the above was contested, which confirms there was service upon the claimant, the court on good cause is allowed to dismiss a suit for want of prosecution where for a year the party fails to take action.

From 18th December, 2019 the claimant has not done anything to prosecute the matter. The submissions that there was COVID-19 pandemic which led to downscaling to court operations is not entirely true since there were normal operations until 16th March, 2020 and from May, 2020 hybrid physical and online operations were in use.

Even where the claimant was constrained for whatever reason, upon notice through the court dated 12th July, 2021 there was no attendance.

This does not demonstrate a diligent litigant keen to be heard. No good cause is shown as to why the claimant failed to take action to prosecute the suit.

Accordingly, application dated 22nd October, 2021 is found without merit and is hereby dismissed. costs to the 1st respondent.

DELIVERED IN COURT AT NAIROBI THIS 20TH DAY OF DECEMBER, 2021.

M. MBAR?

JUDGE

In the presence of:

Court Assistant: Okodoi

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