



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT

NAIROBI

CAUE NO.1444 OF 2017

NAUSHAD SAP.....CLAIMANT

VERSUS

MULTI TOOLS (K) LIMITED.....RESPONDENT

RULING

The respondent, Multi Tools (K) Limited filed application dated 25th June, 2021 seeking orders that the suit be dismissed for want of prosecution and the claimant to pay costs.

The application is supported by the annexed affidavit of Muzna Jin and on the grounds that the claim herein was filed on 24th July, 2017 and the claimant has since not taken any steps to prosecute the same and the delay has caused the respondent great prejudice and the same should be dismissed with costs.

Ms Jin avers in the Supporting Affidavit that upon being served with the claim a response was filed on 2nd October, 2018 and since no steps have been taken to have the matter fixed for hearing and hence it should be dismissed for want of prosecution.

The claimant was served with the instant application on 6th October, 2021 and there is an Affidavit of Service sworn by Nicholus M Kimwele dated 24th November, 2021 to confirm service.

There was no response, a Replying Affidavit and on the appointed date for hearing on 8th November, 2021 the claimant's advocate submitted that he was experiencing problems in filing a Replying Affidavit and was allowed 7 days to file the same and parties allowed time to file written submissions with regard to the application dated 25th June, 2021.

The claimant did not file the Replying Affidavit.

Only the respondent filed written submissions which have been put into account and the single issue for determination is whether the suit should be dismissed for want of prosecution.

Rule 16 of the Employment and Labour Relations Court (Procedure) Rules, 2016 (the Rules) allow a party to move the court seeking for the dismissal of the suit for want of prosecution where no action has been taken within one year from the date of filing suit.

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 claimant was allowed time to reply to the instant application and show reasonable cause as to why the suit has not been prosecuted for a period of over one year save there is no reply and the court finds no good cause to keep this suit alive.

The respondent has moved the court for good cause and taken account of the date of filing the suit, a response has since been filed and witness statements filed and served yet the claimant has not seen any good reason to set the matter down for hearing.

Accordingly, application dated 25th June, 2021 is found with merit. The suit is hereby dismissed for want of prosecution pursuant to Rule 16 of the Employment and Labour Relations Court (Procedure) Rules, 2016. Costs awarded to the respondent.

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

M. MBAR?

JUDGE

In the presence of:

Court Assistant: Okodoi

..... and