



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAIROBI
CAUSE NO. 2330 OF 2017

(Before Hon. Lady Justice Anna Ngibuini Mwaure)

BANKING INSURANCE AND FINANCE UNION (KENYA).....CLAIMANT

VERSUS

CONSOLIDATED BANK OF KENYA LIMITED.....RESPONDENT

RULING

1. The Respondent filed a notice of motion dated 30th September, 2021 praying for dismissal of the Claimant suit for want of prosecution.
2. The Respondent states that since 23rd April, 2020 when the matter was in court, the Claimant took a back seat and has never taken any steps to fix the matter for hearing.
3. The Respondent states that the Claimant had a duty to prosecute the case without any delay and this inordinate delay demonstrates that a fair trial cannot be achieved.
4. They pray that the suit be dismissed therefore with costs to the Respondent.
5. The Claimant's witness in his replying affidavit says that he is the National Organizing Secretary of the Claimant. He says that the pleadings were filed between 22nd November, 2017 and case was active till 23rd April, 2020 when the Ruling of their application was delivered virtually by Justice Maureen Onyango.
6. That thereafter the world was hit by Covid 19 pandemic but nevertheless they wrote to the Deputy Registrar on 19th May, 2021 requesting for a hearing date.

He says he notified the Respondent of that request.

7. He says that also on 12th July, 2021 he did again request the Deputy Registrar for a date and once again copied the Respondent.

He says that the court was previously only hearing matters of 2016 and before.

8. The court has considered the evidence via the notice of motion by the Respondent and the replying affidavit by the Claimant. The court finds the Claimant has demonstrated they have not just "taken back seat" but has been making efforts to have the matter given a hearing date. It is also well known that until a few months ago this court was understaffed and was only hearing cases of 2016 and before.

The court will therefore decline to grant the application to dismiss the case and will allow the Claimant last chance to have the matter heard.

The parties to fix the case for hearing as soon as possible without any unnecessary delay and have it dispensed with speedily.

DELIVERED, DATED AND SIGNED IN NAIROBI THIS 16TH DAY OF DECEMBER, 2021

ANNA NGIBUINI MWAURE

JUDGE

ORDER

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with **Order 21 Rule 1 of the Civil Procedure Rules**, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court has been guided by Article 159(2) (d) of the Constitution which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of the Constitution and the provisions of **Section 1B of the Procedure Act (Chapter 21 of the Laws of Kenya)** which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

A signed copy will be availed to each party upon payment of court fees.

ANNA NGIBUINI MWAURE

JUDGE