



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 712 OF 2019

DR. NORAH AKONGO OBUDHO.....CLAIMANT

VERSUS

PLANNED PARENTHOOD FEDERATION

OF AMERICA (PPFA).....RESPONDENT

RULING

1. The applicant seeks an order that:-

(a) This suit be dismissed for want of prosecution.

(b) Costs of the suit.

2. The application is premised on grounds set out on the face of the application and in the supporting affidavit of **Mr. Kumiki Gibson**, the General Counsel for the respondent the gravamen of which is that the claimant filed suit against the respondent on 24th October, 2019 and the Respondent filed a statement of response on 25th November, 2019.

3. That the claimant filed supplementary witness statement on 4th February, 2020 and has since not taken any steps to fix the matter for pre-trial conference.

4. That the claimant has failed to take any action to prosecute the claim for over one (1) year and the same be dismissed for want of prosecution.

5. The claimant/respondent filed a replying Affidavit of **Fredrick Okeyo** sworn on 23rd June, 2021 in which the advocate states that the respondent has attempted to fix the suit for hearing but was informed by the Court that only matters filed in the year 2016 were being fixed for hearing.

6. The respondent, annexed annexture 'A' to the replying affidavit which is a notice from the Court to the litigants communicating the aforesaid message.

7. The parties filed written submissions dated 15th September, 2021 and 20th September, 2021 respectively.

8. The Court has considered the depositions by the parties, the written submissions and the Court record in this matter and is satisfied that, the applicant has not adduced any and or any sufficient evidence to demonstrate that the claimant herein has failed and/or refused to prosecute this suit.

9. The suit was filed on 24th October, 2019, and a response filed on 25th November, 2019. That the claimant filed supplementary witness statement on 4th February, 2020 a time when COVID – 19 pandemic afflicted the world including Kenya. That the Court is satisfied from annexture 'A' to the replying affidavit that the Employment and Labour Relations Court at Milimani Commercial Courts has not been fixing dates for matters filed in the year 2019, due to the backlog of the Court which it has embarked to clear giving priority to matters filed in the period 2015 to 2018.

10. The reality of the situation at the Employment and Labour Relations Court at Nairobi deems this particular matter not to have

experienced inordinate delay in its prosecution.

11. Dismissal of this matter without hearing the parties would in the circumstance's deny justice to the claimant and violate his rights under Article 50 of the Constitution of Kenya, 2010, which is the right to a fair hearing.

12. Accordingly, the application lacks merit and is dismissed with costs in the cause. The matter shall be given directions for the hearing of the suit upon delivery of this ruling.

DATED AND DELIVERED AT NAIROBI (VIRTUALLY) THIS 9TH DAY OF DECEMBER, 2021.

Mathews N. Nduma

Judge

Appearances:-

M/s Moka for Respondent/Applicant

Mr. Kero for Claimant

Ekale – Court clerk.