



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 922 OF 2017

SIMON MUCHIRI KAMAU.....CLAIMANT

VERSUS

ONE WAY CLEANING SERVICES.....RESPONDENT

(Before Hon. Justice Hellen S. Wasilwa 27th February, 2020)

RULING

1. The Respondent/Applicant filed the instant application on 27th June, 2019 seeking the following orders:

1. That the suit be dismissed for want of prosecution.

2. That the Respondent do have the costs of this application and the suit.

2. The application is premised in grounds that:

1. The Claimant has not taken steps to prosecute this matter since 16th September, 2013.

2. There has been inordinate delay since the matter was last in court. This delay will prejudice the Respondent and is causing it unnecessary anxiety.

3. Public policy demands that court business be conducted expeditiously.

3. The application is supported by the undated affidavit sworn by Wangui Muhoro the Applicant's Counsel. She depones that after the Applicant responded to the Respondent's Memorandum of Claim on 18th October, 2017 no further steps have been taken by the Respondent to set the matter down for hearing.

4. In response to the application, the Respondent filed a Replying affidavit sworn on 7th October, 2019. He states that after filing of the claim on 17th May, 2017 his advocates invited the Applicant's advocates to fix the claim for hearing on 13th December, 2018.

5. He avers that his advocate was informed that only claims from 2016 and below were being fixed for hearing thus the delay cannot be attributed to his advocates.

6. The application was heard by way of written submissions with each party filing its respective submissions.

Applicant's submissions

7. The Applicant relies on Rule 16 (1) and (3) of the Employment and Labour Relations Court (Procedure) Rules, 2016 and submits that the Applicant has not taken any meaningful steps to prosecute the matter since September, 2017. It further submits that the Respondent has not provided any formal communication indicating that there were no available hearing dates.

8. It relies on the case of **Kaniki Karisa Kaniki v Commercial Bank Limited & 2 Others [2014] eKLR** where the Court held that where delay in the conduct of an action is prolonged or inordinate the Court may in its discretion dismiss the suit.

9. It is its submission that the delay of 2 years does little to ensure that the cause of substantive justice is served.

Respondent's submissions

10. The Respondent submits that at the time of filing the application, the file's inactivity was for 2 months and that such period cannot constitute inordinate delay. It submits that the application is misconceived in law and should be dismissed.

11. The Respondent submits that the Applicant has not shown the efforts he has made to have the claim set for pre-trial for reason that the duty to set a claim for pre-trial, falls on the shoulders of all parties. It relies on Rules 15 and 16 of the Employment and Labour Relations Court (Procedure) Rules, 2016 and urges the Court to dismiss the suit for non-compliance with directions under this rule.

12. I have considered the averments of both Parties. I note that the Claimant filed this Claim on 17/5/2017.

13. A response was filed on 3/10/2017 and a reply thereto on 18/10/2017. Pleadings closed sometimes in December 2018 and the Claimant even invited the Respondent to meet them on 13/12/2018 to fix a hearing date.

14. There seems to have been no action after this. The Respondent filed this application in June 2019. The delay though evident was not in my view inordinate especially in view of this Court's hearing calendar and backlog.

15. The application to strike out this Claim for want of prosecution is in my view not merited and I dismiss it accordingly.

16. Costs in the cause.

Dated and delivered in open Court this 27th day of February, 2020.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Parties – Absent