



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE 980 OF 2017

(Before Hon. Justice Hellen S. Wasilwa 3rd February, 2020)

DOROTHY ONYANGO.....CLAIMANT

VERSUS

INNOVATIONS FOR POVERTY ACTIONS (K).....RESPONDENT

RULING

1. Before this Court is the Respondent's Application dated 29/5/2019 seeking the following orders:-

i. THAT this Honourable Court be pleased to dismiss this suit for want of prosecution.

ii. THAT the cost of this application and of this entire suit be provided for.

2. The Application is based on the grounds set out in the motion and the Affidavit of Donald Rabala sworn on 29/5/2019. The Respondent avers that the Claimant has no interest in the suit as she has failed to take steps in prosecuting the matter since 23/10/2018. Consequently, the Respondent is continuously subjected to unnecessary anxiety.

3. The Claimant opposed the Application vide the Grounds of Opposition dated 4/10/2019. She contends that the application is misconceived, bad in law and incompetent hence should not be entertained as it is an abuse of the Court process. The Claimant is of the position that she has a strong claim against the Respondent which ought to be heard on its merits.

4. The Claimant avers that the last action in the claim was on 22nd November 2018 when this Court's directions were sought. It is further averred that the Claimant's application is premature as it was filed 7 months after the said date.

Submissions by the Parties

5. In its submissions filed on 30/10/2019, the Respondent submits that although this Court has the discretion on whether or not to dismiss a suit for want of prosecution, the same should not be exercised unreasonably, improperly and injudiciously. The Respondent relies on the cases of **Rubina Abdul Majid vs. Julius Marete T/A Ntonyiri Bus Service [2012] eKLR** and **Naftali Opondi Onyango vs. National Bank of Kenya Limited [2005] eKLR**, which outline the guidelines that the Court ought to consider when exercising its discretion.

6. It is submitted that the Claimant has not explained the reason for the delay in fixing the suit for hearing. It is of the position that the 7 months delay is inexcusable, prolonged, inordinate and a hinderance of justice.

7. The Claimant submits that the threshold for the dismissal of a suit for want of prosecution is 1 year in the Employment and Labour Relations Court (Procedure) Rules 2016 as well as the Civil Procedure Rules. It was her position that this threshold could not be derogated from as it was a mandatory requirement. She relies on the case **George Gatere Kibata vs. George Kuria Mwaura & Another [2017] eKLR** to fortify this position.

8. It is submitted that there is no need for the Court's intervention as there has been no inordinate delay or abuse of the Court process. She relies on the case of **Nagie vs. Fielden [1966] 2 QBD 633 at 648** which outlined the guidelines that ought to guide the Court in the exercise of its jurisdiction.

9. Further, that the delay in this suit has not been beyond acceptable limits in the prosecution of cases. She relies on the case **Utalii Transport Company Limited & 3 Others vs. NIC Bank Limited & Another [2014] eKLR**.

10. The Claimant submits that the Respondent has not provided any evidence of the prejudice it has suffered, as such, there is no reasonable cause why the suit should be dismissed. She relies on the case of **Communications Courier & Another vs. Telkom (K) Limited [1999] eKLR.**

11. I have considered the averments of both Parties. I notice that though the Claimant has not set down this case for hearing since 22/11/2018 this delay is not inordinate bearing in mind this Court's calendar and the backlog that the Court has been clearing.

12. I exercise my discretion and reject this application and order that the Claimant to set down this case for hearing within 90 days. In default the matter will stand dismissed.

13. Costs in the cause.

Dated and delivered in open Court this **3rd day of February, 2020.**

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Miss Wamukore holding brief Muhindi for Claimant

Serunyuch holding brief Rabala for Respondent