



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KISUMU**

**CASE NO. 348 OF 2016**

*(Before Hon. Justice Mathews N. Nduma)*

**PETER NYONGESA BARASA .....CLAIMANT**

**VERSUS**

**MARY NJOKI KAMAU T/A CHECK POINT BUTCHERY.....RESPONDENT**

**RULING**

1. The suit was filed by the claimant against the respondent on 26<sup>th</sup> November 2016. The respondent filed a statement of defence and counterclaim on 15<sup>th</sup> December 2016.
2. The respondent/applicant filed the application to dismiss the suit by the claimant on 5<sup>th</sup> April 2019 for lack of prosecution.
3. Since close of pleadings upon filing of defence and counter claim on 15<sup>th</sup> December 2016, the claimant has not set down the matter down for hearing nor has the respondent set the matter down for hearing of the counter claim and dismissal of the claimant's suit.
4. Both parties in this matter are guilty of latches and none has clean hands.
5. In view of *Article 50(1) read with Article 159(2) (b) and (d) of the constitution of Kenya 2010*, the court grants both parties herein opportunity to prosecute the claim and counter claim respectively. The claimant earned a salary of Kshs. 13,648 per month and therefore this suit is better handled by a subordinate court.
6. The cause of action arose in Eldoret town where the respondent business is based and in which enterprise the claimant worked. The suit is therefore transferred to the Chief Magistrate court at Eldoret for hearing and determination on a priority basis. The Deputy Registrar E&LRC to effect the transfer in the cause.

**Ruling Dated, Signed and delivered at Nairobi this 30<sup>th</sup> day of April, 2020**

**Mathews N. Nduma**

**Judge**

**ORDER**

In view of the declaration of measures restricting court of operations due the COVID-19 pandemic and in light of the directions issued by his Lordship, the Chief Justice on 15<sup>th</sup> March 2020, this ruling has been delivered to the parties online with their consent. 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 18 of the Civil 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.

**Mathews N. Nduma**

**Judge**

**Appearances**

Mr. Mwamu for Claimant

Respondent in person

Chrispo – Court Clerk