



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT**  
**AT NAIROBI**  
**CAUSE NO. 1975 OF 2017**

*(Before Hon. Lady Justice Maureen Onyango)*

**ONESMUS MULI MUSEMBI..... CLAIMANT**

**VERSUS**

**KINPASH ENTERPRISES LIMITED .....RESPONDENT**

**RULING**

Before me for determination is a notice of motion dated 1<sup>st</sup> October 2019 and filed on 3<sup>rd</sup> October 2019. In the motion the applicant who is the respondent in the substantive suit seeks the following orders –

1. That this Court be pleased to dismiss the claimant’s suit for want of prosecution and
2. That the costs of the suit and this application be borne by the claimant/respondent.

The application which is made under Order 17 Rule 2(3), Order 51 Rule 1 of the Civil Procedure Rules and Sections 1A, 1B and 3A of the Civil Procedure Act is supported by the grounds on the face thereof and the affidavit of JAMES NGOTHO NJUNGE. In summary, the applicant avers that the suit herein which was filed on 4<sup>th</sup> October 2017, was responded to by the applicant vide appearance which was entered on 31<sup>st</sup> January 2018 and a defence together with supporting documents filed on 23<sup>rd</sup> February 2018. That since then no steps have been taken by the claimant to set down the suit for hearing.

The applicant avers that the pendency of the suit is prejudicial to the applicant as the witnesses it intends to call may not easily be traced or their attendance may only be obtained by amount of delay or expenses beyond its reach. It further avers that the applicant continues to incur costs in legal fees while the pendency of the suit is also a cause of anxiety to the applicant.

It is the applicant’s position that the claimant has lost interest in the suit and may not be keen to bring it to a conclusion. It prays for orders as sought in the application.

When the application first came up for hearing Counsel for the claimant Mr. Mageto of M’NJAU AND MAGETO ADVOCATES informed the court that he had filed grounds of opposition and was willing to pay throw away costs. That was on 3<sup>rd</sup> October 2019. Those grounds of opposition are not on record.

The court directed the parties to dispose of the application by way of written submissions following the rejection of throw away costs by Counsel for the applicant Mr. Njunge instructed by Kabugu and Company Advocates. Counsel for the applicant filed submissions which were served upon the claimant’s Counsel. The claimant did not file any submissions and Counsel for the claimant did not attend court following service of mention notice to confirm filing of submissions and take date for ruling.

I have considered the submissions by Counsel for the applicant which basically reiterate the averments in the application and supporting affidavit.

I have perused the file and it is true that absolutely no action has been taken by the claimant since filing suit. The first entry on the proceedings was the hearing of the instant application.

Rule 16 of the Employment and Labour Relations Court (Procedure) Rules 2016 provides as follows –

**16. Notice to show cause why suit should not be dismissed**

**(1) In any suit in which no application has been made in accordance with Rule 15 or no action has been taken by either party within one year from the date of its filing, the Court may give notice in writing to the parties to show cause why the suit should not be dismissed and if no reasonable cause is shown to its satisfaction, may dismiss the suit.**

**(2) If reasonable cause is given to the satisfaction of the Court, it may make such orders as it thinks fit to obtain the expeditious hearing and determination of the suit.**

**(3) Any party to the suit may apply for dismissal as provided in paragraph (1).**

**(4) The court may dismiss the suit for non-compliance with any direction given under this rule.**

In view of the fact that the claimant has not done anything even after being served with this application, it is evident that he has lost interest in the suit.

I accordingly dismiss the suit for want of prosecution with no orders for costs.

**DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 26<sup>TH</sup> DAY OF JUNE 2020**

**MAUREEN ONYANGO**

**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 15<sup>th</sup> March 2020 and subsequent directions of 21<sup>st</sup> 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, the 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 Civil Procedure Act (Chapter 21 of the Laws of Kenya)** which impose on the 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.

**MAUREEN ONYANGO**

**JUDGE**