



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAIROBI
PETITION NO. 6 OF 2016

**MONICA KASIKA (suing as the administrator of the estate
of the late PIUS KISILU IKUU).....PETITIONER**

V

MINISTRY OF STATE OF DEFENCE....1ST RESPONDENT

THE ATTORNEY GENERAL.....2nd RESPONDENT

RULING

1. The Petitioner herein instituted these legal proceedings against the Respondents on 27 January 2016 alleging that the failure to pay the terminal dues of one Pius Kisilu Ikuu (deceased) was a violation of the rights guaranteed by Articles 41 and 47 of the Constitution.
2. The Petitioner sought a declaration that the failure amounted to constitutional violation(s), payment of the terminal dues and damages.
3. The Respondents filed a replying affidavit sworn by a Staff Officer with the Ministry of Defence in opposition to the Petition on 22 June 2018.
4. On 5 March 2020, the Respondents filed a Motion seeking an order striking out the Petition for want of prosecution and on 13 July 2020, the Motion was cause-listed but none of the parties attended the virtual link despite the advocates on the record being notified through email.
5. When the file was next placed before Court on 22 July 2020, the Court directed that service of the Motion be effected upon the Petitioner.
6. The Petitioner caused to be filed on 28 August 2020 a replying affidavit sworn by her advocate on record.
7. When the Motion came up for hearing on 22 September 2020, the Petitioner was not represented.
8. The Court directed that the parties file and exchange submissions and that the Respondents notify the Petitioner of the directions.
9. The Respondents filed their submissions on 28 September 2020 while the Petitioner filed her submissions on 1 October 2020.
10. The Court has considered the Motion, affidavits and submissions.
11. Apart from stating that she attempted to secure hearing dates in 2017 and 2018, it is correct as contended by the Respondents that the Petitioner had gone to slumber as the Deputy Registrar of this Court has severally caused notices to be published asking advocates with claims from 2016 backwards to visit the Registry and fix hearing dates.
12. The Court also notes that despite alleging that the terminal dues payable to the estate of the deceased were never paid, the Respondents filed records to show the payments were made to the Petitioner through her bank account.
13. In light of the failure to provide sufficient explanation for the inordinate delay to cause the Petition to be listed for hearing, the Court will allow the Motion.
14. The Petition is dismissed for want of prosecution with costs in the cause.

Delivered through Microsoft teams, dated and signed in Nairobi on this 29th day of October 2020.

Radido Stephen

Judge

Appearances

For Petitioner Mutisya & Co. Advocates

For Respondents Mr. Mate, Special State Counsel, Office of the Attorney General

Court Assistant Judy Maina