



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE NO. 1079 OF 2016

JOSEPH KIMEU NZAU.....CLAIMANT

v

HALL EQUATORIAL LIMITED.....RESPONDENT

RULING

1. Joseph Kimeu Nzau (Claimant) instituted these legal proceedings against Hall Equatorial Ltd (Respondent) on 6 June 2016 and the Issues in Dispute were stated as

- (i) Non-payment of one month salary in lieu of notice.
- (ii) Non-payment of overtime.
- (iii) Non-payment of service charge.
- (iv) Compensation for unfair dismissal.
- (v) Non-payment of 11 days salary.
- (vi) Compensation for 82 days not taken.
- (vii) Payment of House allowance.

2. Pursuant to leave granted on 20 February 2018, the Claimant filed an Amended Memorandum of Claim on 21 February 2018. The Respondent filed a Memorandum of Defence on 25 April 2018.

3. The Claimant took no steps to prosecute the Cause and on 13 March 2020, the Respondent filed a Motion seeking orders

1. THAT this Honourable Court be pleased to dismiss the Claimant's suit for want of prosecution.
2. THAT the costs of the suit and this application be borne by the Claimant.

4. The Claimant filed an affidavit sworn on 19 August 2020 in opposition to the application. This prompted the Respondent to file a further affidavit on 24 September 2020.

5. On 29 September 2020, the Court directed the parties to file and exchange submissions.

6. The Respondent filed its submissions on 8 October 2020 while the Claimant filed his submissions on 19 October 2020.

7. In seeking the dismissal of the Cause, the Respondent contended that the Claimant had not taken any steps to prosecute the Cause since it was last in Court on 20 February 2018.

8. The delayed hearing of the Cause, the Respondent urged, had made it impossible to have a fair hearing and/or prejudiced a fair hearing due to unavailability of witnesses and fading memories

9. Opposing the application, it was asserted by the advocate on record for the Claimant that the failure to prosecute was because she had been

waiting for instructions from the Claimant on the Response before fixing the Cause for hearing; she was waiting for an independent witness and the declaration of COVID19 public health pandemic.

10. The Court has considered the Motion, affidavits and submissions.

11. The explanations for inaction on the part of the Claimant do not appear convincing or sufficient. The Claimant always knew the case to prosecute and how to prosecute it and it is inexplicable that it would take him over a year to get a corroborative witness, if at all.

12. It is equally unconvincing that the Claimant required over a year to provide further instructions to his advocate on record on the Respondent's Defence.

13. The COVID19 public pandemic declaration is also a mere excuse. The declaration was made in March 2020.

14. It is correct as submitted by the Respondent that it is the instant Motion which woke up the Claimant from his slumber.

15. However, the Court will allow the Claimant the last opportunity to prosecute the Cause on the following terms

(a) Any further witness statements to be filed and served within the next 15 days.

(b) The Claimant pays the Respondent's wasted costs of the Motion assessed as Kshs 7,500/- within 15 days.

(c) In default of compliance with all or any of the above terms, the Cause will stand dismissed without any further Court order.

16. Costs in the cause.

Delivered through Microsoft teams, dated and signed in Kisumu on this 18th day of November 2020.

Radido Stephen

Judge

Appearances

For Claimant S.M. Kitonga & Co. Advocates

For Respondent Titus Makhanu & Associates Advocates

Court Assistant Judy Maina