



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI
CAUSE NO.1682 OF 2016

DR GEORGE WEKESA CLAIMANT

VERSUS

MULTIMEDIA UNIVERSITY OF KENYA..... RESPONDENT

RULING

The respondent, Multimedia University of Kenya filed application dated 22nd February, 2020 seeking for orders that the claimant's suit be dismissed for want of prosecution and payment of costs on the grounds that the claimant filed his suit on 23rd August, 2016 and the matter was last in court on 3rd October, 2018 when the same was certified ready for hearing. Since, the respondent has issued 4 invitations to the claimant's advocate to attend and take a hearing date but he has failed to attend. It is clear that the claimant has lost interest in the matter, he is an indolent litigant and should not enjoy at equity and the suit should be dismissed for want of prosecution with costs.

The application is supported by the affidavit of Dennis Joseck Mare Advocate attending for the respondent and who avers that he represents the respondent in these proceedings and upon pleading being closed on 23rd August, 2018 the claimant has not taken any action to take a hearing date forcing the respondent to move and invite him vide letters dated 4th October, 2018; 18th November, 2019 and 17th January, 2020 to take a hearing date but he failed to attend.

Advocate Mare also avers in his affidavit that it I snow more than 12 months since the matter was last in court and the claimant has not shown any interest in the suit and it should be dismissed with costs.

Keeping the suit alive has caused the respondent undeserved anxiety and expense hence detrimental and prejudicial and in the interests of justice the orders sought should be issued.

The claimant filed a Replying Affidavit sworn by Wycliffe Omwenga, advocate representing the claimant in these proceedings and who avers that the diary for the year 2016 was ponded in November, 2019 and immediately invited the respondent to fix a hearing date by consent on 29th November, 2019 when the court file was missing. By letter dated 17th January, 2020 the respondent was invited to fix a hearing date but the claimant's representative was indisposed.

Advocate Omwenga also avers that the claimant attended court registry on 20th February, 2020 to fix a hearing date but found a date had been fixed by the court for 31st March, 2020.

The matter has not been fixed for hearing since the court has been addressing 2015 and below matters and the respondent is aware of this fact. The instant application was filed while there was a hearing date.

Both parties attended court and made oral submissions.

Pleadings herein closed on 3rd October, 2018. Parties were directed to secure a hearing date at the registry.

Under Rule 16 of the Employment and Labour Relations Court (Procedure) Rules, 2016 (the Rules) parties have one (1) year to move the court and fix a suit for hearing and failure to which, such suit can be dismissed by the court or upon application by either party where no reasonable cause is shown to justify inaction.

16. (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.

On the record, the respondent filed the instant application on 22nd February, 2020 and attended court on 25th February, 2020 when the same was allocated a hearing date for the 31st March, 2020.

It is therefore not correct where the claimant vide the Replying Affidavit of Advocate Omwenga at paragraphs 7 and 8 that;

7. Subsequently, a hearing date was fixed by the honourable court.

8. When our representative attended court for fixing of another invitation letter dated 20th February 2020, he found out that a hearing date had already been fixed by the court. ...

Since 3rd October, 2018 the claimant has taken no action to have the matter heard and determined.

Whereas the court has been keen to address the backlog and old matters over 5 years old, each litigant has the right to move the court and secure hearing of his matter and not sit back and wait for an application such as the one filed by the respondent. The Court Rules allow the respondent to move as done herein.

However, to ensure each party is heard on the merit, the instant application taken into account and the inaction of the claimant addressed, the matters addressed by the claimant in the Replying Affidavit not being completely true, there shall be a sanction before the claimant is allowed to proceed.

Accordingly, the application seeking dismissal of the suit for want of prosecution shall not be allowed in this instance, save the claimant shall meet the respondent's costs herein assessed at ksh.50, 000 to be paid within 30 days; the claimant shall move and ensure a hearing date is allocated within the next 30 days; and Where there is inaction, the suit shall stand dismissed with costs as of 30th January, 2021.

DELIVERED AT NAIROBI THIS 16TH DAY OF DECEMBER, 2020.

M. MBARU

JUDGE