



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAIROBI
CAUSE NO. 1319 OF 2016

(Before Hon. Lady Justice Hellen S. Wasilwa on 19th October, 2018)

DAVID ERIS.....CLAIMANT

VERSUS

BALOO SAFARIS LIMITED.....RESPONDENT

RULING

1. The application before me is the Respondent/Applicant's application dated 2nd May 2018 seeking dismissal of this case for want of prosecution stating that the Claimants have not taken any steps to have this case prosecuted since it was filed in 2016.

2. The Claimant has filed a Replying Affidavit and Grounds of Opposition in response to the application and highlighted that:-

a) The case has been active in that as recent as 27th March 2017 the Claimant had fixed the case for mention for pre-trial. Thereafter on the 20th March 2018, the Claimant's Counsel invited the respondent's advocates to fix a date for the case as shown in the letter dated 15th January 2018 which is annexed to the replying affidavit.

b) The court can take judicial notice of the fact that it had been giving priority to the older cases and it was not possible to have a hearing date for this case earlier.

c) It is in the interests of justice demand that the case is heard and determined on its merits because the Claimant in this matter has got a reasonable cause of action.

3. The Claimants also submitted that the Respondent has not shown that there has been inordinate and inexcusable delay in the circumstances of this case. They further submitted that the Respondent has not satisfied the Court that he will be prejudiced by the delay if the suit were to be allowed to proceed to trial. Further on, he has not satisfied the Court that a fair trial cannot be achieved.

4. I agree that the Claimants have not prosecuted this case since it was filed in 2016. However, I take judicial notice of the fact the registry has not been able to allow some cases to be fixed for hearing given the heavy backlog that this Court has been facing. The Claimant cannot therefore be wholly to blame for their inaction in prosecuting this case. The Claimants have also submitted that they are willing to prosecute this case.

5. I exercise my discretion and dismiss this application. I will however direct that the Deputy Registrar (DR) gives the Parties herein a chance to set down this case for hearing on a priority basis.

6. Costs in the cause.

Dated and delivered in open Court this 19th day of October, 2018.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Bichanga holding brief for Dr. Ekuru for Claimant

Kimashua holding brief for Midwa for Respondent