



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT MOMBASA

CAUSE NO 379 OF 2015

BROWNSON KITERIA.....CLAIMANT

VS

PEMPA INVESTMENT LIMITED T/A NEPTUNE BEACH HOTEL.....RESPONDENT

RULING

1. By its application brought by Notice of Motion dated 31st May 2018 and filed in court on 6th June 2018, the Respondent seeks dismissal of the Claimant's claim for want of prosecution.
2. The application which is supported by the affidavit of Joseph Karanja Kanyi, Advocate is based on the ground that over the last one year, the Claimant had not taken any step to prosecute the matter.
3. In his supporting affidavit, Counsel depones that the matter was last in court on 27th January 2017.
4. The Claimant's response is contained in a replying affidavit sworn by Lumatete Muchai, Advocate on 16th August 2018. He depones that the matter was last in court for hearing on 29th November 2017.
5. Counsel states that there has been no delay and states that by the time the current application was filed on 31st May 2018, only 6 months had lapsed since the Claimant's last step towards prosecution of the suit, on 30th October 2017, when he took a hearing date and served a hearing notice on the Respondent.
6. It is further deponed that there is no prolonged delay to warrant dismissal of the suit for want of prosecution because the delay complained of by the Respondent does not go beyond the one year provided for in order 11 Rule 2(1) of the Civil Procedure Rules, 2010.
7. Counsel for the Claimant accuses the Respondent of failure to comply with pretrial rules thus contributing to delay in prosecution of the matter.
8. Perusal of the court record reveals that this matter was last in court for pretrial directions on 21st July 2017 on which date the matter was fixed for hearing on 29th November 2017. There is no evidence of any proceedings on 29th November 2017 nor was there endorsement on the court file indicating the reason as to why the matter did not take off. It could well be that an adjournment was occasioned by the Court itself.
9. The emerging position therefore is that the matter was last in court on 21st July 2017, with a possibility of an adjournment on 29th November 2017 not at the instance of either party. The resulting time lapse from the last court appearance and the filing of the application for dismissal would translate to less than a year and the Court finds no reason to dismiss the claim for want of prosecution.
10. The application is therefore dismissed with the caveat that the Claimant shall set down the matter for hearing within the next three forty five (45) days from the date of this ruling.
11. The costs of this application will be in the cause.
12. Orders accordingly.

DATED SIGNED AND DELIVERED AT MOMBASA THIS 30TH DAY OF NOVEMBER 2018

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JUDGE

Appearance:

Mr. Lumatete Muchai for the Claimant

Mr. Maundu for the Respondent