



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT & LABOUR RELATIONS COURT OF KENYA**

**AT NAIROBI**

**CAUSE NO 2286 OF 2015**

**PETER OMWANCHA & 20 OTHERS.....CLAIMANTS**

**VERSUS**

**XFOR SECURITY SOLUTIONS (K) LTD.....RESPONDENT**

**RULING**

**Introduction**

1. The Claimants brought this suit on 12.1.2016 seeking declaration that their employment contracts were unfairly terminated and praying for payment of terminal benefits. The respondent filed her defence on 02.4.2016 denying the alleged unfair termination and the claim for terminal benefits. She further prayed for the suit to be dismissed with costs.

2. On 18.6.2018 the respondent brought the Notice of Motion dated even date, praying for the suit to be dismissed for want of prosecution. The application is supported by the affidavit sworn by the respondents Advocate, M/s. Rubeen Dar on 5.6.2018. The grounds upon which the application stands are that since 22.4.2016 when the pleading closed, the Claimants have not taken any steps towards fixing the suit for hearing. That the said delay is unreasonable and the same amounts to injustice to the Respondent's case. That the Claimants have a duty to ensure speedy prosecution of their suit but the delay in doing so for 2 years has caused unjustified anxiety and exposed to the respondent.

3. The Claimants have opposed the application through the Replying Affidavit sworn by their Advocate Mr. David Mogoi on 6.9.2018. The counsel contended that he came on record for the Claimant on 4.10.2017 and found that the parties were involved in negotiations towards settling the suit out of court and exhibited letters dated 28.4.2016 and 23.4.2016 from the defence counsel asking for proposal from the Claimants' counsel then on record. That on 29.9.2017, he sought to revive the negotiations by responding to the defence counsel by making proposals for the Claimants and the defence counsel responded by the letter dated 10.10.2017. That the delay in fixing a hearing date was due to the said negotiations and contended that the Claimants are very much interested in prosecuting the suit. He denied that the delay was unreasonable.

4. In addition the Claimants counsel contended that after coming on record he noticed that there was no need to amend the claim and has since filed application dated 6.9.2018 seeking to amend the claim which is yet to be heard.

5. M/s. Dar prosecuted the application and basically repeated the contents of her supporting affidavit that the Claimant has failed to take any steps towards fixing the suit for hearing 2 years after close of pleadings. That there was no negotiations for settlement because the proposal by the defence was ignored. She therefore prayed for the suit to be dismissed for want of prosecution.

6. Mr. Mogoi opposed the application by relying on his Replying Affidavit. He maintained that the delay in fixing the suit for hearing was due to the ongoing negotiations. That he responded to the defence counsel's letters by making proposal through his letter dated 29.9.2017 which was ignored and instead the defence counsel filed the present application. He further contended the Claimants are still desirous to prosecute their suit after amending the claim.

7. I have carefully considered the application, Affidavits and submissions by counsel. There is no dispute that since the close of pleadings, no steps have been taken towards fixing the suit for hearing. The reasons given by the Claimants is that there was attempt to settle the suit out of court. The applicant has denied the alleged negotiations and contended that the Claimant ignored her offer for out of court settlement.

8. Rule 15 of the Employment and Labour Relations Court (procedure) 2016 Rules provides that 14 days after close of pleadings the parties must move the court for pre-trial directions. That is the first step before fixing the suit for hearing and it is during that step of the proceedings where parties should indicate the possibility of out of court settlement. In this case, that crucial step was never taken.

9. Even if one was to excuse that step, the Claimants were duty bound to take steps towards prosecuting their suit by inviting the defence counsel to the registry to fix a hearing date. It is now over two years since the pleadings herein closed and the Claimant neither moved the court for pretrial directions or invited the defence to fix a hearing date at the court registry. That delay is unreasonable and unjustified. Though the Claimants allege that there were ongoing negotiations, it is clear from the record that the respondent proposed an amicable settlement but the Claimants ignored her.

10. In view of the foregoing unreasonable and unjustified delay to fix the suit for hearing, 2 years after close of pleadings, I allow the application. Consequently, the suit herein is dismissed for want of prosecution. Each party to bear his or her own costs

**Dated, Signed and Delivered in Open Court at Nairobi this 9<sup>th</sup> day of November, 2018**

**ONESMUS N. MAKAU**

**JUDGE**