

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI

CAUSE NO. 6 OF 2017

(Before Hon. Justice Hellen S. Wasilwa on 4th December, 2018)

HILDA ANYIKA ISURUTICLAIMANT

VERSUS

POONAM CHAUDHARYRESPONDENT

RULING

1. The Application before me is the Notice of Motion application dated 31.5.2018 and filed in Court on 12th June 2018 which application is filed by the Respondent seeking orders that the Application herein be dismissed for want of prosecution and that the Claimant to pay costs of this suit.

2. The Application is brought under Rule 16(1) of the ELRC (Procedure) Rules 2016 and is supported by the annexed affidavit of Paul Amuga the Respondent's Counsel herein.

3. The Application is also made on the grounds that the Claimant has not taken steps towards the prosecution of the claim save 12th April 2017 when the Claimant filed a Reply to the Respondent's Response to the claim. That it is therefore apparent that the Claimant has lost interest in this claim and the delay in prosecuting the claim continues to prejudice the Respondent by subjecting her to escalating legal costs and perpetual anxiety.

4. The Claimant opposed this application. The Claimant submitted that she could not have set down the case for hearing since she tried unsuccessfully to have the case fixed for hearing. She annexed her Annex HAS -1, which is a notice from the DR ELRC – Nairobi indicating that there would be no cases fixed for hearing save for those fixed from 2015 and below.

5. Indeed, it is apparent that the Court diary has been clogged up. It is also in this Court's knowledge that the heavy backlog caused the Court to make an administrative decision to hear only cases filed 5 years and over. It is therefore true that the Claimant did not deliberately refuse or ignore to take a hearing date and prosecute this case.

6. The Application must therefore fail. Parties to take a hearing date at the registry according to the Court's diary.

7. Costs in the cause.

Dated and delivered in open Court this 4th day of December, 2018.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

Ochieng holding Rono for Claimant – present

Mwaura holding brief Amuga for Respondent/Application – Present