



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS
COURT AT NAIROBI
CAUSE NO. 383 OF 2015

(Before Hon. Lady Justice Hellen S. Wasilwa on 2nd March, 2017)

FRED KUGONZA.....CLAIMANT

VERSUS

VSO JITOLEE.....RESPONDENT

RULING

1. The Application before Court is the Respondent's application dated 8th March, 2016, brought under Order 17 Rule 2(3) and Order 51 Rule 1 of the Civil Procedure Rules Cap 21 Laws of Kenya. The application seeks to dismiss the Claimant's suit for want of prosecution and it based on the grounds that:

1. More than one year has lapsed since the pleadings in the Claimant's case closed and yet the Claimant/Respondent has taken no steps to comply with Order 9 Civil Procedure Rules or to fix the suit for hearing.

2. The application is brought in the interest of justice and in order to safeguard the dignity of the Court.

2. The Application is supported by the Affidavit of one Muema Kitulu the Advocate on record for the Respondent wherein he restates the grounds on the face of the application and adds that the delay in prosecution of the case jeopardizes the defence case because circumstances of some of the defence witnesses may change resulting in their unavailability to give evidence and/or loss of vital documentary evidence.

3. They cite the delay as inordinate, unreasonable and unconscionable which is indicative of lack of interest on the part of the Claimant as such the prayers sought ought to be allowed.

4. The Claimant filed a Replying Affidavit wherein he states that the application is in bad faith and a deliberate attempt to obstruct the cause of justice in this suit contrary to the overriding objective of the Court without justifiable cause.

5. He states that he filed suit on 13.3.2015, through the firm of Sichangi and Partners who had full conduct of the suit. That in May, 2016, he instructed the firm of Cyrus Maina & Company to take over conduct of the matter after it became clear that there was no communication and or action by the previous firm of A-Advocates.

6. That his current Advocates on record have made efforts albeit unsuccessful to fix the matter for hearing but the diary for year 2016 had closed in March of 2016. It is his further contention that as his Advocates were pursuing a hearing date from the Court there was without prejudice communication with the Respondent to try and settle the matter out of Court. That negotiations have since collapsed.

7. The Claimant/Respondent also states that though the instant application was filed in March, 2016, it was neither served upon him nor his Advocates until 23rd September, 2016, while negotiations were still ongoing going to show that the Respondent is acting in bad faith.

8. The Claimant states that he is desirous to prosecute his Claim against the Respondent save for the unavailability of hearing dates at the registry which is beyond his control. That the Applicant/Respondent has not demonstrated that they have suffered any prejudice as this is an employment Claim and it is the Respondent's duty to keep records.

9. Furthermore, the Claimant states that the application was filed prematurely as a year had not lapsed from the time when the suit was filed and as such he prays for the application to be dismissed with costs.

10. Having considered the averments of both parties, I note that the Claimants have shown that they are still desirous of pursuing this claim. Since man should not be condemned unheard and by virtue of the spirit of the Constitution of allowing access to justice, I will not lock out the Claimants from pursuing their claim.

12. I will dismiss this application. I direct that the Claimant proceeds and sets down this case for hearing within 90 days failure of which this claim will stand dismissed.

13. Costs in the cause.

Read in open Court this 2nd day of March, 2017.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

In the presence of:

No appearance for Claimant

No appearance for Respondent