REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI

CAUSE NO 2098 OF 2012

ENOCK AZENGA ENDOME…….CLAIMANT

VERSUS

KAWAMWAKI LIMITED……..…… RESPONDENT

RULING

1. By a Notice of Motion dated 8th September 2015, the Respondent seeks dismissal of the Claimant's claim for want or prosecution. The Motion which is supported by the affidavit of Jairus Otieno, Advocate sworn on 8th September 2015 is based on the ground that the Claimant has not taken steps to prosecute his claim for a period of over twelve (12) months.

2. Counsel depones that the Claimant instituted this suit in October 2012 to which the Respondent duly responded. On 15th May 2013, the Claimant's served a mention notice for 29th May 2013 on the Respondent's Advocates pursuant to which the case was fixed for hearing on 13th November 2013.

3. The case was however not listed and parties were advised that hearing dates would be available in the following year, 2014. Thereafter the Claimant did not take any steps to set down the matter for hearing.

4. The Claimant's response is contained in his replying affidavit sworn on 18th November 2015. He depones that his claim was filed by his former Advocates in the year 2012. He adds that he had subsequently followed up with the said Advocates to have the matter fixed for hearing.

5. The Claimant states that the failure of his former Advocates to fix the matter for hearing should not be visited on him. He pleads that he will suffer irreparably if the Respondent's application is allowed as he will have been condemned unheard for a mistake that is not his own.

6. In a supplementary affidavit sworn by the Respondent's Director, Tim G. Vaulkhard on 7th August 2016 it is deponed that the Claimant has failed to show that he had indeed followed up his claim with his former Advocates. Further, the Claimant had not shown the mistake committed by the Advocates.

7. Vulkhard states that it is neither fair nor just that the Respondent should be held in a state of anxiety and uncertainty by a Claimant who is unwilling to prosecute his case.

8.The single issue for determination in this application is whether the Respondent has made out a case for dismissal of the Claimant's claim for want of prosecution. In the written submissions filed on behalf of the Respondent on 22nd February 2017 reference was made to the cases of ***Bandari Co-op Savings***

Society Ltd v Seven Seas Technologies Ltd & another (Mombasa High Court Civil Suit No 20 of 2007) and ***Cecilia Wanjiku Njoroge v National Environment Management Authority & another [2013] eKLR*** which were dismissed because the Plaintiffs had taken no action thereon for periods in excess of one year.

9. In his replying affidavit sworn on 18th November 2015, the Claimant appears to blame his former Advocates for the failure to fix the matter for hearing. It is however a well settled principle of law that cases belong to litigants not their Advocates (see ***J.G Builders v Plan International [2015] eKLR***). It is therefore not enough for a party to say that they were let down by their Advocates; they must state the exact nature of the Advocate's mistake in order to move the Court to properly exercise its discretion.

10. In the instant case, the Claimant appears to have abandoned his case with his former Advocates only to be activated by the Respondent's application for dismissal. Parties who file cases in court must follow them with diligence if only because those who have been brought to court have a legitimate expectation that they will not have law suits hanging over their heads like the sword of Damocles. As held in ***Emily Jerobon Bett v Rael Cherop Maritim & 2 others [2014] eKLR***, delay in prosecuting a claim is prejudicial to the Respondent as important witnesses may no longer be available.

11. In this particular case, no credible explanation has been offered by the Claimant for the delay in prosecuting his case. I therefore allow the Respondent's application and dismiss the claim for want of prosecution.

12. Each party will bear their own costs.

Orders accordingly.

DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI

THIS 16TH DAY OF JUNE 2017

LINNET NDOLO

JUDGE

Appearance:

Mr. Nyamweya for the Claimant

Mr. Otieno for the Respondent