



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAIROBI
CAUSE NO. 726 OF 2011
GEORGE PETER MUTISO CLAIMANT
VERSUS
JIMACK ENGINEERING WORKSHOP RESPONDENT

Mr. Mutuku for claimant/applicant

Mr. Gichamba for respondent

RULING

1. The suit was dismissed by Hon. Byram Ongaya *suo moto* on 19th April 2016 for want of prosecution. Court notes that at the time, the court had a service week to deal with matters that had not been prosecuted for a long time.
2. The suit was filed in this court on 8th of May 2011.
3. From the record, the last step by the parties was on 15th June 2012, when Mr. Omogo for Mr. Amata for the claimant took a hearing date before Hon. Justice Paul Kosgei for 19th October 2012.
4. No other step was taken by the claimant until when a hearing notice dated 22nd March 2016 was issued to the parties by the court and both parties did not appear for the hearing.
5. The applicant states that they were not served with a notice to show cause and also states without substantiation that the suit had fallen victim to sudden closure of the court diary on several occasions.
6. The record does not show any attempt by the claimant to take a hearing or mention date between 15th June 2012 and 19th April 2016, when the matter was dismissed for want of prosecution.
7. The court agrees with the finding in **Utalii Transport Company Limited and 3 others Vs. NIC Bank & another [2014] eKLR** where the judge stated “*it is the primary duty of the plaintiffs to take steps to progress their case since they are the ones who dragged the defendant in court.*”
8. It is clear that the inordinate delay by the claimant is prejudicial to the respondent in a manner that cannot be remedied by costs. The suit has been hovering over the head of the respondent for over five years.

9. The court finds no justification to set aside the order of Ongaya J. to dismiss the suit for want of prosecution.

10. The application is dismissed with no order as to costs.

Dated and Signed at Nairobi this 18th day of August, 2017.

MATHEWS NDERI NDUMA

PRINCIPAL JUDGE

Dated, Delivered and Signed at Nairobi this 18th day of August, 2017.

JORAM NELSON ABUODHA

JUDGE

Delivered in the presence of:

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