



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**  
**CAUSE NO 1056 OF 2010**

**KEVIN JAMES WOOD.....CLAIMANT**

**VS**

**RIFT VALLEY RAILWAYS (K) LIMITED.....RESPONDENT**

**RULING**

1. This ruling proceeds from the Respondent's application dated 18th May 2015 seeking orders for dismissal of the Claimant's case for want of prosecution. The application which is supported by the affidavit and further affidavit of Abidha Nicholus O.P, Advocate is based on the following grounds:

- a) That since the year 2013 the Claimant has not taken any steps towards listing the matter for hearing;
- b) That the Claimant has lost interest in the case;
- c) That it is unfair and unjust for the Claimant to endlessly subject the Respondent to anxiety of defending a suit that is not being prosecuted;
- d) That it is in the interest of justice that the prayers sought are granted.

2. In the supporting affidavit sworn by Abidha Nicholus O.P, Advocate on 18th May 2015, he depones that the matter was last in court on 17th October 2013.

3. In the Claimant's replying affidavit sworn on 18th February 2016, he depones that on 14th February 2011, he was in Court ready to proceed with his case when it was adjourned to allow the Respondent a chance to offer an out of court settlement. On that date the Court dispensed with the Claimant's attendance.

4. The Claimant adds that after losing his job with the Respondent he moved to South Africa. On 7th June 2013, the Claimant sent an email to his then Advocates on record, Sichangi and Company Advocates, notifying them of his departure to South Africa while inquiring about the progress of his case. He did not get a response. When the Claimant came to Court on 10th February 2016, he was surprised to learn that his Advocates had ceased acting for him and that the Respondent was pursuing an application for dismissal of his claim for want of prosecution.

5. The Claimant further depones that there was a breakdown of communication between himself and his Advocates; at some point email communication from the Claimant's Advocates was sent to a wrong address, [fbeukes@yahoo.com](mailto:fbeukes@yahoo.com) instead of his correct address, [serfzone@yahoo.com](mailto:serfzone@yahoo.com).

6. The 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. It is a general principle in the administration of justice that cases filed in court should be dispensed with expeditiously.

7. In submitting that it is the duty of the Claimant to take active steps towards prosecuting their case, the Respondent made reference to the case of *Fitzpatrick v Batger & Co. Ltd [1967] All ER* in which **Lord Denning**, citing his decision in *Reggentine v Beecholme Bakeries Ltd [1967] 111 Sol. Jo. 216* stated as follows:

***“It is the duty of the plaintiff's advisers to get on with the case. Public policy demands that the business of the courts should be conducted with expedition.”***

8. Section 3 of the Employment and Labour Relations Court Act enjoins this Court to facilitate the just, expeditious, efficient and proportionate resolution of disputes. Moreover, Order 17 Rule 2(1) of the Civil Procedure Rules, 2010 allows the Court *suo moto* to issue a notice to show cause why a suit that has not been listed for a year should not be dismissed for want of prosecution. Similarly, under Sub Rule (3) a party may apply for dismissal of the suit.

9. With specific reference to matters before this Court which exercises a special jurisdiction, it would appear that while expedition is an important segment of the principal objective of the Court, it is not the only consideration. In exercising its discretion therefore, the Court must be guided by the peculiar circumstances of each case. Whatever the Court does, it must not sacrifice justice at the altar of expedition.

10. I have looked at the history of this case and there is no denying that it has been in our system for a long time. I have however also considered its peculiar circumstances including the fact that the Claimant is no longer resident in this country as well as the fact that the parties were at some point pursuing an out of court settlement. Taking all factors into account, I have arrived at the conclusion that the ends of justice would best be served by keeping this case alive. The Respondent's application is therefore declined

11. I direct the parties to take immediate steps towards fixing the main claim for hearing on a day to day basis.

12. The costs of this application will be in the cause.

13. Orders accordingly.

**DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 13TH DAY OF MAY 2016**

**LINNET NDOLO**

**JUDGE**

**Appearance:**

Mr. Diro for the Claimant

Mr. Abidha for the Respondent