



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NO. 2022 OF 2011

KENYA ENGINEERING WORKERS' UNION.....CLAIMANT

VERSUS

I.S.L. KENYA LTD.....RESPONDENT

RULING

1. Before me is a motion seeking dismissal of this suit for want of prosecution. The applicant who is the respondent contends that the claimant has not taken a step in over two years to prosecute the suit herein. The respondent therefore feels prejudiced by the abeyance of this matter.
2. According to Mr. Okello in his affidavit sworn in support of the application, this claim was filed against the respondent on 30th November, 2011 and that the matter was last in Court on 21st February, 2012 for mention and was taken out by the claimants since they had not served a mention notice. Mr. Okello therefore deponed that the claimant was not interested in the suit and the same ought to be dismissed by the Court.
3. The claimant opposed the application claiming that when the suit was filed the respondent was fully in operation. After filing the suit the respondent sacked some of the unionizable employees because there was no material to enable the respondent operate fully as required. The respondent's doors have since remained closed and only guards are at the premises.
4. According to the claimant, it is the respondent who appealed to the claimant to ask the Court to allow parties to negotiate out of Court and report the outcome but no negotiations have taken place because the directors of the respondent are not within the premises. The claimants therefore blamed the respondent for the delay.
5. I have perused the Court minutes on this file and can only go as far back as 1st April, 2014 when the matter came before Lady Justice Ndolo for the hearing of the present application. Mr. Baraza who appeared for the claimant asked for time to file a reply to the application which the Judge granted. The Court therefore cannot confirm the averments of Mr. Okello in support of the instant application regarding the delay on part of the respondent to prosecute this suit. Whereas this Court does not encourage indolent litigants, a hearing on merit finally resolves disputes more than a disposal on technicality. The Court therefore leans more towards allowing parties their day in Court rather than dismissal on technicality.
6. I would therefore disallow this application but direct that the claimant sets the same down for hearing

at the earliest opportunity.

7. It is so ordered.

Dated at Nairobi this 17th day of July 2015

Abuodha J. N.

Judge

Delivered this 17th day of July 2015

In the presence of:-

.....for the Claimant and

.....for the Respondent.

Abuodha J. N.

Judge