

REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA AT NAIROBI

CAUSE NO. 404 OF 2013

BOB CHARLES AUCH..... CLAIMANT

VERSUS

RIFT VALLEY RAILWAYS (K) LIMITED 1ST RESPONDENT

RULING

1. The suit was filed on 21st March 2013. A response to the suit was filed on 30th May 2013. Applicant filed supplementary list of witnesses and a witness statement of Domitila Mwangeli Muyia on 27th April 2015.

2. On 19th May 2015 an application was brought by the Respondent seeking *interalia* for orders;

That the Claimant has not taken any steps towards listing the matter for hearing from the year 2013 when the same was filed.

That the Claimant has lost interest in the case and the same be dismissed.

3. The Claimant filed a replying affidavit on 17th July 2015 in which the Claimant explained that the delay in setting down the matter for hearing was occasioned by reluctance of his witness a former colleague engaged by the Respondent to testify while he worked for the Respondent. The witness who is very material to the case, finally agreed to record a statement and to testify in the matter. That the list of witnesses and statement of the witness was filed on 27th April 2015, and the Claimant is ready to proceed with the hearing of the suit.

4. The Respondent relies on Civil procedure Rules, 2010 order 17 Rule 1 as follows;

“in any suit in which no application has been made or step taken by either party for one year, the Court may give notice in writing to the parties to show cause why the suit should not be dismissed and if no cause is shown to its satisfaction, may dismiss the suit.”

Determination

5. This rule is not applicable to matters before the Employment and Labour Relations Court.

Secondly, even if the rule was applicable, the Claimant had taken the step of filing a list of witnesses and a witness statement on 27th April 2015 hardly two weeks from the date the Application to dismiss the case for want of prosecution was made.

6. This is a clear indication of the Claimant’s interest in the suit. It was reasonable for the Claimant to await the acceptance of a key witness to testify in the matter before he set it for hearing.

7. The case of **Mwangi S. Kimeyi –vs- A. G. & another [2014]eKLR** relied upon by the Respondent / Applicant does not aid this Application.

8. The Application is dismissed and the matter is to be allocated a hearing date at the Registry in the new term.

Dated and Delivered at Nairobi this 6th day of November 2015

MATHEWS NDERI NDUMA

PRINCIPAL JUDGE