



**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA**  
**AT NAIROBI**  
**CAUSE NO.1709 OF 2017**  
**BENEDICT KYALO MUINDE.....CLAIMANT**  
**VERSUS**  
**STRAIGHT SECURITY SERVICES LIMITED....RESPONDENT**

**RULING**

The respondent, Straight Security Services Limited filed application dated 28<sup>th</sup> September, 2020 seeking the suit herein be dismissed for want of prosecution and the same is supported by the affidavit of Stephen Saenyi Advocate for the respondent and on the grounds that the claimant has neglected to take steps in prosecuting this case and it is now over a year since filing suit on 12<sup>th</sup> June, 2017. The delay in prosecuting the suit is inordinate, unreasonable and it is apparent that the suit was filed in abuse of court process and should be dismissed with costs.

Mr Saenyi also avers in his affidavit that the claimant filed the claim on 12<sup>th</sup> June, 2017 and a defence filed on 18<sup>th</sup> June, 2018 and to which the claimant replied on 3<sup>rd</sup> July, 2018.

On 20<sup>th</sup> March, 2019 the matter was mentioned for pre-trial directions and the case certified ready for hearing. It is now over a year and the claimant has not taken any action to prosecute the claim and the same should be dismissed with costs.

In reply, the claimant filed the Replying Affidavit of Patrick Waiganjo Wachira Advocate in the conduct of this matter and who avers that upon filing the claim the matter came up for taking hearing directions on 20<sup>th</sup> March, 2019 but the court diary has since been full. the Deputy Registrar issued notice dated 7<sup>th</sup> November, 2019 to the effect that only parties who filed suits before the year 2016 and below would be allocated dates. This has also affected the claimant's case due to inability to take hearing dates and the application by the respondent should be dismissed with costs.

It is common cause that the claimant filed the Memorandum of Claim on 29<sup>th</sup> August, 2017 and a defence filed on 29<sup>th</sup> June, 2018.

Pleadings closed and parties attended court on 20<sup>th</sup> March, 2019 and hearing directions issued.

There is no action taken since until the respondent filed the instant application seeking to have the suit dismissed for want of prosecution.

The claimant's case is that the Deputy Registrar issued notice directing that the diary as closed and only matters filed in the year 2016 and below would be allocated a hearing date. This notice is dated 7<sup>th</sup> November, 2019 whereas pleadings closed on 20<sup>th</sup> March, 2019. The claimant has not rendered an account of the time from such date until the stated Notice by the Deputy Registrar of 7<sup>th</sup> November, 2019.

This is the claimant's case. Save for what his Advocate avers as the reason(s) why there is inaction in prosecuting this matter; there is no evidence as to why the claimant has not taken any action to assert his claims as the right-holder of the suit herein.

Rule 16 of the Employment and Labour Relations Court (Procedure) rules, 2016 (Court Rules) allow a party to move the court and seek for the dismissal of a suit where there is no action taken within a year. Such allow a party keen to be heard move the court to secure their rights and avoid unnecessary delays.

In this case, the court finds no justifiable cause warranting the failure by the claimant to prosecute his case for a period going to over a year and contrary to Rule 16 of the Court Rules.

In the case of **Ruth Ndegwa v Development Alternatives Incorporated [2017] eKLR** the court held that;

Rule 16(1) and (3) of the Employment and Labour Relations Court (Procedure) Rules, 2016 provides that;

16. (1) In any suit in which no application has been made in accordance with Rule 15 or no action has been taken by either party within one year from the date of its filing, the Court may give notice in writing to the parties to show cause why the suit should not be dismissed and if no reasonable cause is shown to its satisfaction, may dismiss the suit.

2. ....

3. Any party to the suit may apply for dismissal as provided in paragraph

(1) These rules are not empty. They are meant to ensure due process and orderliness. No party should stand prejudiced. Properly moved, the respondent's application is found with merit.

Application by the respondent herein and dated 28<sup>th</sup> September, 2020 is found with merit and the suit is hereby dismissed for want of prosecution pursuant to Rule 16 of the Court Rules. Costs to the respondent.

**DELIVERED IN OPEN COURT AT NAIROBI THIS 20<sup>TH</sup> DAY OF JANUARY, 2021**

**M. MBARU**

**JUDGE**

In the presence of:

Court Assistance: Okodoi

..... and .....