Chepkwesi v Inspector General of Police & 2 others (Civil Appeal E002 of 2023) [2024] KEHC 16372 (KLR) (23 December 2024) (Ruling)

Neutral citation: [2024] KEHC 16372 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT ELDORET

CIVIL APPEAL E002 OF 2023

RN NYAKUNDI, J

DECEMBER 23, 2024

BETWEEN

TOM MAINJA CHEPKWESI ..... PETITIONER

AND

THE INSPECTOR GENERAL OF POLICE ..... 1ST RESPONDENT

THE DIRECTOR OF PUBLIC PROSECUTION ..... 2ND RESPONDENT

THE HONOURABLE ATTORNEY GENERAL ..... 3RD RESPONDENT

RULING

Representation:

M/s Oduor Munyua & Gerald. Advocates

1. On 22nd February, 2023, the Petitioner herein filed a petition seeking orders:

    a. That an order of certiorari hereby issued removing into this court and quashing the entire proceedings against the Petitioner before the Eldoret CMCR NO. E1078 of 2022; *Republic v Veronica Chepkurui Koskei & Tom Mainja Chepkwesi*;

    b. A declaration that investigations on the Petitioner by Respondents and the institution of criminal proceedings against the Petitioner before the Eldoret CMCR No. E1078 of 2022 *Republic v Veronica Chepkurui Koskei & Tom Mainja Chepkwesi* violates his constitutional rights, is an abuse of the process of court and therefore unlawful, null and void ab initio;

    c. An order of certioarari be and is hereby issued to quash the entire charge sheet and proceedings against the Petitioner before the Eldoret CMCR NO. E1078 of 2022 *Republic v Veronica Chepkurui Koskei & Tom Mainja Chepkwesi*.

d. An order of prohibition be and is hereby issued prohibiting the respondents from proceeding with the prosecution before the Eldoret CMCR NO. E1078 of 2022 *Republic v. Veronica Chepkurui Koskei& Tom Mainja Chepkwes*.

e. That an order for exemplary and punitive damages be and is hereby issued against the Respondents jointly and severally on account of their gross violation of the Petitioner's fundamental freedoms and rights as enumerated in the Petition;

f. Any further orders writs, directions as the court may deem appropriate;

g. Costs of the suit plus interest.

2. The record indicates that upon filing of the petition and an application, certain orders were issued on the same date, and service was effected upon the Respondents as evidenced by an affidavit of service filed on 13th October, 2023. However, since that date, the court record reveals a conspicuous absence of any steps taken by the Petitioner to advance the prosecution of either the petition or the accompanying application.

The decision

3. The legal framework governing dismissal of proceedings for want of prosecution is well established. Order 17 Rule 2(1) of the *Civil Procedure Rules* provides that in any suit where no application has been made or step taken by either party for one year, the court may dismiss such suit. This provision embodies the fundamental principle that litigation must be conducted with reasonable diligence and expedition.

4. The court in *Bremer Vulkan Schiffbau & Maschinenfabrik v South India Shipping Corporation Ltd* (1981) 2 WLR 141 addressed the issue by accepting that the court has inherent jurisdiction in our case expressly stated in Section 3 and 3A of the *Civil Procedure Act* to protect itself from abuse of its processes by litigants who filed actions with no intention to prosecute them. Thus:

> "The high court's power to dismiss a pending action for want of prosecution is but an instance of a general power to control its own procedure so as to prevent its being used to achieve injustice. Such a power is inherent in its constitutional function as a court of justice. Every civilised system of government requires that the state should make available all its citizens a means for the just and peaceful settlement of disputes between them as to their respective legal rights. The means provided are courts of justice to which every citizen has a constitutional right of access in the role of Plaintiff to obtain the remedy to which he claims to be entitled in consequence of an alleged breach of his legal or equitable rights by some other citizen, the defendant. Whether or not to avail himself of this right of access to the court lies exclusively within the Plaintiff's choice; if he chooses to do so, the defendant has no option in the matter; his subjection to the jurisdiction of the court is compulsory. So, it would stultify the constitutional role of the High Court as a court of justice if it were not armed with power to prevent it process being misused in such a way as to diminish its capability of arriving at a just decision of the dispute.
>
> The power to dismiss a pending action for want of prosecution in cases where to allow the action to continue would involve a substantial risk that justice could not be done is thus properly described as an "inherent power" the exercise of which is in the "inherent jurisdiction" of the High Court. It would I thin be conducive to legal clarity if it (sic) use of

these two expressions were confined to the doing by the court of acts which it needs must have the power to in order to maintain its character as a court of justice."

5. In addition, in *Birkett V James* (1977) 2 ALL ER 801, the court put it this way:

> " To commence and to continue litigation which you have no intention to bring to conclusion can amount to an abuse of process. Where this is the situation the party against whom the proceedings is brought is entitled to apply to have the action struck out and if justice so required (which will frequently be the case) the courts will dismiss the action. The evidence which was relied on to establish the abuse of process may be the Plaintiff's inactivity. The same evidence will then no doubt be capable of supporting an application to dismiss for want of prosecution. However, if there is an abuse of process, it is not strictly necessary to establish want of prosecution under either of the limbs identified by Lord Diplock in Birkett v James. In this case once the conclusion was reached that the reason for the delay were (Sic) one which involve abusing the process of the court in maintaining proceedings when there was no intention of carrying the case to trial the court were (sic) entitled to dismiss the proceedings."

6. The jurisprudential principles governing dismissal for want of prosecution were comprehensively articulated in the case of *Ivita -vs- Kyumbu* (1984) KLR 441, where the Court established that the test is whether the delay is prolonged and inexcusable, and if it is, whether justice can be done despite such delay. This principle recognizes that justice must be administered not only to the petitioner but also to the respondents, who have a legitimate expectation that matters brought against them will be prosecuted diligently.

7. As elucidated in *Mwangi S. Kimenyi -vs- Attorney General and Another*, Civil Suit Misc. No. 720 of 2009, the court must consider whether the delay has been intentional and contumelious, whether it amounts to an abuse of the court process, whether it is inordinate and inexcusable, and whether it gives rise to a substantial risk to fair trial or causes serious prejudice to the Respondents.

8. In the present circumstances, the Petitioner, having obtained initial orders, appears to have adopted a casual approach to the prosecution of this matter. This is particularly concerning given that the petition seeks to halt criminal proceedings, yet the Petitioner has not demonstrated the urgency that such matters inherently demand. The court cannot countenance such approach to litigation, particularly where constitutional questions and criminal proceedings are concerned.

9. The legal maxim that justice delayed is justice denied finds particular resonance in this case. The Respondents, who are constitutional office holders charged with law enforcement and prosecution, are entitled to have matters challenging their actions determined expeditiously. Their constitutional mandate cannot be held in abeyance indefinitely due to a petitioner's lack of diligence in prosecuting their case.

10. As held in *Jim Rodgers Gitonga Njeru – Versus - Al-Husnain Motors Limited & 2 others* [2018] eKLR, the court's duty to ensure efficient administration of justice includes ensuring that matters are prosecuted with reasonable diligence. This duty becomes even more pronounced where the matter involves public interest and constitutional questions.

11. Having carefully considered the circumstances of this case, the nature of the reliefs sought, and the period of inaction, I am satisfied that this is a proper case for the exercise of this court's discretion to dismiss the petition for want of prosecution. However, considering that the full one-year period

contemplated under Order 17 Rule 2(1) has not elapsed, and mindful of the constitutional questions raised, I shall grant the Petitioner one final opportunity to prosecute this matter.

12. Consequently, I hereby order that:

    a. The Petitioner shall take steps to prosecute this petition within the next 30 days from the date hereof.

    b. Should the Petitioner fail to take such steps within the stipulated period, this petition shall stand dismissed for want of prosecution without further reference to this court.

    c. Costs shall be in the cause.

13. Orders accordingly.

DATED AND SIGNED AT ELDORET VIA CTS THIS 23RD DAY OF DECEMBER, 2024

.....

R. NYAKUNDI

JUDGE