



Angoyia v Joseph & 3 others; Director of Public Prosecution (Interested Party) (Miscellaneous Criminal Application E051 of 2023) [2024] KEHC 15961 (KLR) (18 December 2024) (Ruling)

Neutral citation: [2024] KEHC 15961 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VIHIGA
MISCELLANEOUS CRIMINAL APPLICATION E051 OF 2023**

JN KAMAU, J

DECEMBER 18, 2024

BETWEEN

ZAKAYO HENRY ANGOYIA APPLICANT

AND

JOHNSTONE MAKANGA JOSEPH 1ST RESPONDENT

THE CHIEF EBUYAI LOCATION 2ND RESPONDENT

THE PRINCIPAL MAGISTRATE COURT AT VIHIGA 3RD RESPONDENT

THE HONOURABLE ATTORNEY GENERAL 4TH RESPONDENT

AND

THE DIRECTOR OF PUBLIC PROSECUTION INTERESTED PARTY

RULING

1. On 29th November 2023, this court gave elaborate directions on the filing of Affidavits and Written Submissions. It directed the Applicant to extract the order for service upon the 1st Respondent for his further action. He collected the order on 6th December 2023. This court gave him time to present the Affidavit of Service evidencing service upon the 1st Respondent. This would have assisted this court to ascertain if the Applicant was keen in prosecuting the case.
2. Although the matter was taken out of the cause list of 20th February 2024 and the Applicant was informed of the new date of 4th April 2024 by Counsel for the Interested Party on 3rd April 2024 that the matter would be mentioned on 4th April 2024, the Applicant did not attend court on 17th December 2024. He admitted that he was aware of the date but that there was no law in Kenya allowing for verbal service.



3. On 17th December 2024, the Applicant informed the court that he had filed Written Submissions but he had left them at home. When he came to court today, he informed the court that he did not file the Supplementary Affidavit and Written Submissions by 31st January 2024 because the Respondents and Interested Party did not serve him with any response to his Notice of Motion application dated 21st August 2023 and filed on 24th August 2023.
4. It is the Applicant's matter and he has the duty to prosecute it. Failure by the Respondents and Interested Party to respond to the said application ought not to have held his hands since 29th November 2023. He did not also avail any Affidavit of Service as was requested by the court. He left at 11.40am. It is now 14.17pm but he has not returned.
5. While the court has looked at his Reply to the Notice to Show Cause that he swore on 31st August 2024 and filed on 16th December 2024, it is evident that he has tried to explain the reasons for not prosecuting his matter but the same were not satisfactory to this court. An application ought not to pend in court for over a year moreso when there is a stay of proceedings in another court.
6. Accordingly, as it is clear that the Applicant is not keen to prosecute this matter, the Notice of Motion application dated 21st August 2023 and filed on 24th August 2023 be and is hereby dismissed for want of prosecution with no order as to costs.
7. The effect of this order is that direction no (6) of the order of 29th November 2023 be and is hereby set aside and/or vacated forthwith. File to be closed forthwith.
8. Orders accordingly.

DATED AND DELIVERED AT VIHIGA THIS 18^H DAY OF DECEMBER 2024

J. KAMAU
JUDGE

