



**Letshego Kenya Ltd & another v Rono (Civil Suit 53 of 2018)
[2023] KEHC 3023 (KLR) (28 March 2023) (Ruling)**

Neutral citation: [2023] KEHC 3023 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CIVIL SUIT 53 OF 2018
RN NYAKUNDI, J
MARCH 28, 2023**

BETWEEN

LETSHEGO KENYA LTD 1ST APPLICANT

IGARE AUCTIONEERS 2ND APPLICANT

AND

WILSON KIPKETER RONO RESPONDENT

RULING

1.
 - a. This suit herein be dismissed for want of prosecution
 - b. The plaintiff be condemned to pay the costs of this application and the suit.
2. The application is premised on the grounds set out therein and the contents of the affidavit in support of the application.
3. The applicant’s case is that more than twelve months have lapsed since the matter was last heard and the plaintiff has not taken any positive step to prosecute the same. They urge that the delay is manifestly inordinate and excessive since the matter was last in court on June 29, 2021 when the plaintiff was in attendance in court. The matter has been mentioned severally this year with the defendant taking upon itself to expedite the matter but the plaintiff has never been in attendance. The applicant’s case is that the delay has greatly prejudiced the defendants and as such they seek to have the same dismissed.
4. The respondent opposed the application, submitting that he has been keen and persistent in pursuing this matter as illustrated in the replying affidavit dated 3rd of February 2023 where he specified the .specific dates he has have moved the honourable court and engage the applicants. He stated that the delay has been occasioned by the applicants as they have exhibited lack of enthusiasm to prosecute the suit.



5. The respondent contended that the delay was occasioned by the COVID 19 pandemic. Further, that they filed their submissions pursuant to court orders but the applicants never filed or served them with theirs. He urged the court to dismiss the application with costs as dismissal of the suit will be a drastic measure and a great injustice to the respondent.
6. Upon considering the application and the responses, the following issues arise for determination;
Whether the suit should be dismissed for want of prosecution
7. Want of prosecution is governed by Order 17 of the Civil Procedure Rules which provides as follows: -
 - (1) 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 cause is not shown to its satisfaction, may dismiss the suit.
 - (2) If cause is shown to the satisfaction of the court it may make such orders as it thinks fit to obtain expeditious hearing of the suit.
8. I have considered the grounds of the application and the respondent's position on the same. I have also perused the record of the court and the advocate for the plaintiff was even present in court on May 31, 2022 whilst the advocate for the defendant was absent. The same as for when the matter came up for mention in January of this year, thereby lending credence to the claims that the respondent has been keen to prosecute the matter. I also take issue with the fact that the application was filed on November 20, 2022 yet the same was dated December 13, 2022.
9. Dismissal of a suit is a drastic measure and is usually done as a last resort when all else has failed. In Argan Wekesa Okumu vs Dima College Limited & 2 others [2015] eKLR the court considered the principles for dismissal of a suit for want of prosecution and stated as follows:-

“The principles governing applications for dismissal for want of prosecution are well settled and have been established by a long line of authorities. The Applicant must show that the delay complained of is inordinate, that the inordinate delay is inexcusable and that the defendant is likely to be prejudiced by such delay. As such the 3rd defendant in this case must meet the burden of proof in seeking the dismissal of the plaintiff's case for want of prosecution see the case of Ivita –vs-Kyumbu (1984) KLR 441. Further to this, the decision of whether or not to dismiss a suit is discretionary and this Court must exercise such discretion judiciously. Additionally, each case must be decided on its own facts keeping in mind that a court should strive to sustain a suit where possible rather than prematurely terminating the same.”
10. In Naftali Opondo Onyango vs National Bank of Kenya Ltd [2005] eKLR, the court noted that a court should be slow to dismiss a suit for want of prosecution if it is satisfied that the suit can proceed without further delay. The court stated as follows:-

“However, in deciding whether or not to dismiss a suit under rule 6 it is my view that a Court will be slow to make an order if it is satisfied that the hearing of the suit can proceed without further delay, that the defendant will suffer no hardship and that there has been no flagrant and culpable inactivity on the part of the plaintiff.”

... Now applying the principles enunciated in the authorities, I have found that, the delay of under one year in this case may be long but it is not inordinate.”



11. It is my strong view that it would be in the interest of justice to sustain the suit. In the premises, I decline to grant the orders for dismissal for want of prosecution and I dismiss the application with costs to the respondent. The parties are directed to expedite the hearing of the suit.

DELIVERED, DATED & SIGNED AT ELDORET ON THIS 28TH DAY OF MARCH 2023

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R. NYAKUNDI

JUDGE

