



REPUBLIC OF KENYA



**Kimani v Piccalily International Limited & 2 others (Civil Case E176 of 2019)
[2023] KEHC 2426 (KLR) (Commercial and Tax) (24 March 2023) (Ruling)**

Neutral citation: [2023] KEHC 2426 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL CASE E176 OF 2019
A MABEYA, J
MARCH 24, 2023**

BETWEEN

FREDRICK KIMEMIA KIMANI PLAINTIFF

AND

PICCALILY INTERNATIONAL LIMITED 1ST DEFENDANT

GULF AFRICAN BANK LIMITED 2ND DEFENDANT

**JOSEPH GIKONYO T/A GARAM INVESTMENTS AUCTIONEERS 3RD
DEFENDANT**

RULING

1. This is a ruling on the motion on notice dated 4/10/2022 by the 2nd and 3rd defendant. It was brought under sections 1A, 1B & 3A of the *Civil Procedure Act*, order 40, rule 6 and 7 and order 50 rule 1 of the *Civil Procedure Rules*.
2. The motion sought to set aside the order made on 22/6/2020 that restrained them from dealing with LR No NBI/Block 92/221, Spring Valley, Nairobi. It also sought to strike out and/or dismiss the suit for want of prosecution.
3. The grounds thereof were set out in the body of the motion and in the supporting affidavit of Lawi Sato. These were that, the injunctive order was made on 22/6/2020 for 120 days, the plaintiff was directed to continue servicing the facility by making payments to defray the outstanding amount.
4. Further, that it is now 2 years since then and the suit has not been prosecuted; that the plaintiff was not servicing the facility which as at September, 2022 stood at Kshs 65,073,963/19 and USD 48,131.43. That the plaintiff failed to take steps to prosecute the suit as directed by the court. That the injunctive order was therefore punitive to the applicants as they could not take any steps to realize their security.



5. Although the application was served, the same was not responded to. The court decided not to determine the same summarily as unopposed but decided to determine the same on merit.
6. I have considered the record. After the orders were granted to the plaintiff on 22/6/2020, no action seems to have been taken. The plaintiff went to slumber. There was only one appearance on 1/10/2020. All subsequent appearances before the Deputy Registrar were given a wide bearth. It is true that the plaintiff may have lost interest in the suit after having obtained the subject order.
7. I have considered the averments in the application as supported by the Affidavit of Lawi Sato. They are uncontroverted. I find that the period of 120 days given in the order have lapsed. Further, the life of an interlocutory order of injunction under order 40 rule 6 is 12 months. The order has outlined its purpose as the plaintiff has decided not to prosecute the suit.
8. In the circumstances, I allow the application and set aside the order of 22/6/2020. As regards the dismissal for want of prosecution a notice to show cause shall issue accordingly. The 2nd and 3rd defendant will have the costs of the application.

It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 24TH DAY OF MARCH, 2023.

A. MABEYA, FCIArb

JUDGE

