



Ethics & Anti-Corruption Commission v Mulwa t/a Almahir Suppliers, Castro Suppliers, Mobile Farm Limited, Stemu Supplies, Zombe Supplies & Al Alhi Merchants & 9 others; Kamau & another (Interested Parties) (Anti-Corruption and Economic Crimes Civil Suit E041 of 2022) [2023] KEHC 3893 (KLR) (Anti-Corruption and Economic Crimes) (27 April 2023) (Ruling)

Neutral citation: [2023] KEHC 3893 (KLR)

REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
ANTI-CORRUPTION AND ECONOMIC CRIMES
ANTI-CORRUPTION AND ECONOMIC CRIMES CIVIL SUIT E041 OF 2022
EN MAINA, J
APRIL 27, 2023

BETWEEN

ETHICS & ANTI-CORRUPTION COMMISSION APPLICANT

AND

STEVEN KISONZO MULWA T/A ALMAHIR SUPPLIERS, CASTRO SUPPLIERS, MOBILE FARM LIMITED, STEMU SUPPLIES, ZOMBE SUPPLIES & AL ALHI MERCHANTS 1ST RESPONDENT

OCHOKI OMAIYO JOSEPH 2ND RESPONDENT

SERAH KEMUNTO KERANDI 3RD RESPONDENT

JAMES NYANG'AU GEKOBÉ 4TH RESPONDENT

HUMPHREY WENDE ABOK 5TH RESPONDENT

ISAAC BARASA WEKESA 6TH RESPONDENT

MOSES JUMA SIRENGO 7TH RESPONDENT

JOSEPH KAMAU MWANGI 8TH RESPONDENT

MAGETO OMARI MIRIERI 9TH RESPONDENT

JACK NYARIANGO OGAO 10TH RESPONDENT

AND

ROSE NYAMURA KAMAU INTERESTED PARTY

LUCY MORAA NYARIANGO INTERESTED PARTY



RULING

1. Before me is a Notice of Motion dated January 17, 2023 by which the Plaintiff/Applicant seeks to reinstate its Notice of Motion dated October 19, 2022 which this court dismissed for want of prosecution on December 20, 2022.
2. The Notice of Motion dated October 19, 2022 was for a temporary injunction to restrain the Defendants/Respondents from alienating, selling, charging or further charging, leasing, wasting, transferring, disposing and/or in any other way dealing with motor vehicles Registration No KCL 393 R and KCK 295 L as they are suspected to have been acquired using proceeds of corruption and economic crimes. This court directed that the application would be heard by way of written submissions which were to be filed within 14 days from November 24, 2022. However, when the court mentioned the matter on December 20, 2022 no submissions had been received and no explanation was forth-coming for the delay and hence the dismissal.
3. In the present application Counsel for the Plaintiff/Applicant has explained that she was away on emergency leave at the time and that Counsel who held her brief, was not able to explain her predicament as she was prevented from joining the virtual court session by a technical hitch. She contends that dismissal of a suit is draconian more so if the delay arose from an inadvertent mistake; and that the Defendants/Respondents shall not suffer any prejudice if the application is granted and therefore this application should be allowed and the submissions which are now on record be admitted.
4. The application was opposed by only some of the Defendants as follows:-The 4th Defendant through grounds of opposition dated February 1, 2023 the gist of which is that the application is but a belated attempt to drag the prosecution of this case; that it is unmerited, misconceived, misplaced, scandalous, vexatious and an abuse of the court process and that the orders it seeks would cause grave injustice and hardship to the 4th Defendant. The 2nd and 9th Defendants through its Grounds of Opposition dated February 16, 2023 written submissions dated February 16, 2023 in which it is contended that no valid reasons have been given to warrant this court to exercise its discretion in favour of the Plaintiff/Applicant; that the Plaintiff/Applicant has given contradictory reasons for noncompliance with this court's directions to file submissions. That the application is misconceived as it is expressed to be brought under Order 12 Rule 7 of the Civil Procedure Rules which is applicable only in application for reinstatement of suits; and further that the Plaintiff/Applicant is guilty of laches as the dismissal order was made on December 20, 2022 but the application was not filed until January 16, 2023 and no explanation has been given for the delay. The 6th, 7th, 8th and 10th Defendants through submissions filed herein on February 17, 2023 in which the court is urged to dismiss the application to pave way for the expeditious disposal of this case; that the case is highly prejudicial to the Defendants and the Interested Parties as it touches on their reputation and their constitutional right to property and further because the application has not tendered any evidence that they were in any way involved in fraudulent activities or corrupt dealings to warrant the grant of the injunctive orders sought.

Determination and analysis

5. The application seeks to reinstate an application which this court dismissed suo moto for failure by Counsel for the Plaintiff/Applicant to comply with the directions of this court to file written submissions. The application is expressed to be made under Order 12 Rule 7 and Order 51 Rule 1 of the Civil Procedure Rules which as correctly submitted by Counsel for the 2nd and 9th Defendants applies to suits but not to applications and who has urged this court to dismiss the application for that



reason. However, my hands are tied by the provisions of not only Order 51 Rule 10(2) which states that: - “No application shall be defeated on a technicality or for want of form that does not affect the substance of the application” but also Article 159(2) (d) of the Constitution which obligates this court to administer justice without undue regard to technicalities.

6. Order 51 does not have an express provision for reinstatement of a dismissed application and this court’s power to do so therefore flows from Section 3A of the Civil Procedure Act which provides that:-

“3A Saving of inherent powers of court.

Nothing in this Act shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.”

7. In view of the foregoing the issue for determination therefore is whether the Plaintiff/Applicant is deserving of the exercise of this Courts discretion in its favour.
8. As pointed out by Counsel for the 2nd and 9th Defendants learned Counsel for the Plaintiff/Applicant has given two contradictory reasons for her failure to comply with the directions of this court. One reason is that Counsel holding her brief was present but was blatantly ignored by this court. In her words - “when the matter was called over, the Applicant had the submissions, dated December 20, 2022, together with authorities ready but owing to the exigencies of duty, only required to upload and serve them on the parties. The Applicant’s advocate sought the court’s indulgence, however the court was not sympathetic to those pleas.” The other reason is that she was away on emergency leave and had instructed a colleague to hold her brief. The only inference that one can draw from these contradictions is that Counsel is not being candid. Be that as it may I would be very reluctant to visit the mistake of Counsel be it inadvertent or through negligence, on her client and for that reason in exercise of the power bestowed upon this court by Section 3A of the Civil Procedure Act, I shall allow the application and reinstate the dismissed application. As the Plaintiff’s submissions are now on record Counsel for the Defendant/Respondents are granted 14 days to file theirs and a ruling shall be delivered on June 8, 2023. It is so ordered.

SIGNED, DATED AND DELIVERED VIRTUALLY ON THIS 27TH DAY OF APRIL, 2023.

E. N. MAINA

JUDGE

