



**Consolidated Bank of Kenya v Lotus Globus International Limited & another;  
Ngunjiri & another (Proposed Interested Parties) (Civil Case 859 of 2009)  
[2023] KEHC 20895 (KLR) (Commercial and Tax) (28 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 20895 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
CIVIL CASE 859 OF 2009**

**A MABEYA, J**

**JULY 28, 2023**

**BETWEEN**

**CONSOLIDATED BANK OF KENYA ..... PLAINTIFF**

**AND**

**LOTUS GLOBUS INTERNATIONAL LIMITED ..... 1<sup>ST</sup> DEFENDANT**

**DR. P.N WAMBUGU NGUNJIRI ..... 2<sup>ND</sup> DEFENDANT**

**AND**

**RAYMOND WAMBUGU NGUNJIRI ..... PROPOSED INTERESTED PARTY**

**ARNOLD NDUNGU NGUNJIRI ..... PROPOSED INTERESTED PARTY**

**RULING**

1. On March 28, 2023, the Deputy Registrar of this Court issued a Notice to Show Cause (NTSC) why this suit should not be dismissed.
2. The Plaintiff responded to the NTSC vide an affidavit sworn by Ligami Eric, its Counsel on record, on May 10, 2023. He averred that the firm of Lilian & Koech Associates was instructed by the Plaintiff to file this suit on its behalf on November 20, 2009 and that the parties filed their respective documents and the matter was ready to proceed for case management conference.
3. That however on March 8, 2013, the Proposed Interested Parties herein filed an application seeking to be enjoined in the suit as interested parties but the application was dismissed by a ruling delivered on November 20, 2013. That being dissatisfied with the said ruling, the Proposed Interested Parties filed a stay application in the matter until an appeal they intended to lodge was heard and determined.



4. That the Court was yet to deliver a ruling on the said stay application to date. That the Plaintiff had written to the Deputy Registrar requesting for a date for mention for directions on how to proceed with the main suit considering the subsistence of the said stay application which prejudiced the right of the plaintiff to prosecute the main suit.
5. That to date no ruling had been delivered on the stay application and the Plaintiff was yet to be served with the intended appeal. That the delay in prosecuting the suit was not deliberate but had been occasioned by factors beyond its control.
6. The germane issue before the court for determination is whether the Plaintiff has shown cause why the suit should not be dismissed.
7. 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.”

8. In view of the foregoing, the Court has discretion in deciding if the reasons given for delay in prosecution of a suit are sufficient. The delay must be excusable, reasonable and with just cause.
9. This suit was filed in 2009, there has been little progress on the matter since then. There is no doubt that there has been an inordinate delay in prosecuting the suit.
10. The main reason adduced for the delay in prosecuting the suit is that there is a pending application for the stay of the suit and a ruling on the same is yet to be delivered. The Plaintiff contends that the continued pendency of delivery of the ruling for the said application has prejudiced its right to prosecute the suit.
11. I note that the said application for stay has never been argued. There was never any order of stay. There is nothing that prevented the plaintiff from prosecuting the suit as the proposed interested parties did not proceed to prosecute their application for stay.
12. Be that as it may, for reason that no party should be condemned unheard, I am prepared to give the plaintiff the final chance of having to prosecute its case.
13. Accordingly, I direct that the plaintiff takes steps to prosecute its case within 90 days failing of which the suit shall stand dismissed for want of prosecution.

It is so ordered.

**DATED and DELIVERED at Nairobi this 28<sup>th</sup> day of July, 2023.**

**A. MABEYA, FCIArb**

**JUDGE**



