



**In re Estate of Peter Kariuki Kiragu (Deceased) (Succession Cause E1791 of 2021)  
[2023] KEHC 24366 (KLR) (Family) (26 September 2023) (Ruling)**

Neutral citation: [2023] KEHC 24366 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
FAMILY  
SUCCESSION CAUSE E1791 OF 2021  
EKO OGOLA, J  
SEPTEMBER 26, 2023  
IN THE MATTER OF  
VIONA AMONDI OCHOLA ..... APPLICANT**

**RULING**

1. The Summons before this Court is dated 22<sup>nd</sup> March 2023. The Applicant prays for the following:-
  - a. That this honorable Court be pleased to set aside and/or vary its orders issued on 24<sup>th</sup> January 2023 dismissing the cause for want of prosecution.
  - b. This honorable court be pleased to reinstate the cause herein and the same be heard on merit.
  - c. The cost of this application be provided for.
2. The Applicant is counsel for the Administrators. This matter was brought before Magare J. on 18<sup>th</sup> January 2023 for parties to show cause why the suit should not be closed. There was no attendance from the parties or their counsel, therefore, the Court closed the suit. The Applicant has deposed in her Supporting Affidavit, that by the time she logged in to the virtual proceedings, the matter had already been called and dismissed. It is for this reason that the Applicant prays for reinstatement of the suit.

**Determination**

3. I have considered the Summons, the affidavit in support, and the entire record of the Court. The only issue for me to determine is whether this suit ought to be reinstated.



4. The constitutional underpinnings on conclusion of matters in a timely manner is contained in Article 159 of *the Constitution*, which provides as follows:

“Judicial authority

- (1) Judicial authority is derived from the people and vests in, and shall be exercised by, the courts and tribunals established by or under this Constitution.
  - (2) In exercising judicial authority, the courts and tribunals shall be guided by the following principles—
    - (a) justice shall be done to all, irrespective of status;
    - (b) justice shall not be delayed;
    - (c) alternative forms of dispute resolution including reconciliation, mediation, arbitration and traditional dispute resolution mechanisms shall be promoted, subject to clause (3);
    - (d) justice shall be administered without undue regard to procedural technicalities; and
    - (e) the purpose and principles of this Constitution shall be protected and promoted.
  - (3) Traditional dispute resolution mechanisms shall not be used in a way that—
    - (a) contravenes the Bill of Rights;
    - (b) is repugnant to justice and morality or results in outcomes that are repugnant to justice or morality; or
    - (c) is inconsistent with this Constitution or any written law.”
5. It is the duty of the court, litigants, as well as advocates, to ensure that matters are concluded expeditiously without inexcusable delay. Sections 1A and IB, of the *Civil Procedure Act*, are relevant, with regard to this and they state as follows:

“1A. Objective of Act

- (1) The overriding objective of this Act and the rules made hereunder is to facilitate the just, expeditious, proportionate and affordable resolution of the civil disputes governed by the Act.
- (2) The Court shall, in the exercise of its powers under this Act or the interpretation of any of its provisions, seek to give effect to the overriding objective specified in subsection (1).
- (3) A party to civil proceedings or an advocate for such a party is under a duty to assist the Court to further the overriding objective of the Act and, to that effect, to participate in the processes of the Court and to comply with the directions and orders of the Court.

1B. Duty of Court



- (1) For the purpose of furthering the overriding objective specified in section 1A, the Court shall handle all matters presented before it for the purpose of attaining the following aims—
  - (a) the just determination of the proceedings;
  - (b) the efficient disposal of the business of the Court;
  - (c) the efficient use of the available judicial and administrative resources;
  - (d) the timely disposal of the proceedings, and all other proceedings in the Court, at a cost affordable by the respective parties; and
  - (e) the use of suitable technology.”

6. Section 3A of the *Civil Procedure Act* gives the court wide discretion over matters and issues that are before it, including the question as to whether it should or should not reinstate a suit dismissed on account of unreasonable delay on the part of the parties to prosecute it. Section 3A reads:

“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. The factors taken into account or consideration for the purpose of reinstatement of suits are numerous, and were addressed in *Ivita vs. Kyumbu* [1984] KLR 441 (Chesoni J), where the court stated:

“The test is whether the delay is prolonged and inexcusable, and, if it is, can justice be done despite such delay. Justice is justice to both the Plaintiff and Defendant; so both parties to the suit must be considered and the position of the judge too, because it is no easy task for the documents, and, or witnesses may be missing and evidence is weak due to the disappearance of human memory resulting from lapse of time. The Defendant must however satisfy the court that it will be prejudiced by the delay or even that the plaintiff will be prejudiced. He must show that justice will not be done in the case due to the prolonged delay on the part of the plaintiff before the court will exercise its discretion in his favour and dismiss the action for want of prosecution. Thus, even if delay is prolonged if the court is satisfied with the plaintiff’s excuse for the delay, the action will not be dismissed, but it will be ordered that it be set down for hearing at the earliest available time.”

8. Reinstatement of a suit is at the discretion of the court, which discretion ought to be exercised in a just manner, as was held in *Bilba Ngonyo Isaac vs. Kembu Farm Ltd & another & another* [2018] eKLR (JN. Mulwa J), which echoed the decision of the court in *Shah vs. Mbogo & Another* (1967) EA 116 (Harris J), where the court stated on the matter of discretion:

“The discretion is intended so as to be exercised to avoid injustice or hardship resulting from inadvertence or excusable mistake or error but is not designed to assist a person who has deliberately sought whether by evasion or otherwise to obstruct or delay the course of justice.”

9. It must be noted that the Courts are under a lot of pressure from backlogs and increased litigation. Therefore it is in the interest of justice that litigation must be conducted expeditiously and efficiently so that injustice caused by delay would be a thing of the past. In this case, the administrators were issued



with grants of letters of administration intestate on 11<sup>th</sup> February 2022. The suit was dismissed on 18<sup>th</sup> January 2023. The Applicant filed this instant Summons on 22<sup>nd</sup> March 2023. In my view, this delay is inordinate and should not be excused. However, where the justice of the case mandates, mistakes of the advocate even if they are blunders, should not be visited on the clients when the situation can be remedied by cost

10. The upshot is that I allow the Summons dated 22<sup>nd</sup> March 2023, and the suit is hereby reinstated. The Applicant to pay costs of the Summons.

It is so ordered.

**DATED AND DELIVERED AT NAIROBI THIS 26<sup>TH</sup> DAY OF SEPTEMBER 2023**

.....

**E.K. OGOLA**

**JUDGE**

*In the presence of:*

N/A for the Applicant

Gisiele Muthoni Court Assistant

