



**Liberty Life Assurance (Kenya) Limited v Egerton University (Civil Case 217 of 2003)  
[2023] KEHC 26903 (KLR) (Commercial and Tax) (15 December 2023) (Ruling)**

Neutral citation: [2023] KEHC 26903 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
CIVIL CASE 217 OF 2003  
A MABEYA, J  
DECEMBER 15, 2023**

**BETWEEN**

**LIBERTY LIFE ASSURANCE (KENYA) LIMITED ..... PLAINTIFF**

**AND**

**EGERTON UNIVERSITY ..... DEFENDANT**

**RULING**

1. On 30/10/2023, this Court issued a Notice to Show Cause to the plaintiff why the suit should not be dismissed for want of prosecution.
2. In answer to the same, both the plaintiff and defendant filed their respective Replying Affidavits. The plaintiff responded to the same vide the replying affidavit of Brenda Onchagwa, Advocate sworn on 27/10/2023.
3. Ms Onchagwa told the Court that the delay in prosecuting the suit was due to the restructuring the plaintiff was undergoing. The restructure led to the amendment of the plaint by replacing the plaintiff's name of Alico (K) Ltd with that of Liberty Life Assurance in 2018. That the Court file thereafter went missing and twice the plaintiff's Advocates attempted to fix the same for trial without success. She swore that the plaintiff is willing, able and ready to prosecute the suit.
4. The defendant supported the notice vide the replying affidavit of Kisilah Daniel Gor. Sworn on 14/11/2023. He narrated to the court the long history the suit has meandered in since April, 2003 when it was filed. That since February, 2020 this matter has not been prosecuted.
5. I have carefully considered the respective parties contestations. Suits are lodged in court for prosecution and not to be parked for unknown reasons. I have considered the reasons advanced for non-prosecution. I note that at some point the parties had tried to have the matter settled. It is not



unusual that hitherto court files used to go missing. However, that is a thing of the past. I have noted the correspondence referred to by Ms. Onchangwa to show the effort undertaken to have the suit prosecuted.

6. In my view, the effort taken is not that of a litigious litigant but one who is akin to have its suit prosecuted were it not for some administrative hindrances.
7. In view of the foregoing, I am satisfied that Sufficient Cause has been shown. The suit should be listed for trial in the normal manner. The costs shall be in the Cause.

It is so ordered.

**DATED AND DELIVERED AT NAIROBI THIS 15<sup>TH</sup> DAY OF DECEMBER, 2023.**

**A. MABEYA, FCI Arb**

**JUDGE**

