



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MACHAKOS**

**(Coram: Odunga, J)**

**CIVIL MISC APPLICATION NO. 124 OF 2019**

**ANN NZULA MUTUA.....PLAINTIFF/RESPONDENT**

**-VERSUS-**

**PATRICK KATHANZU KIILU.....DEFENDANT/APPLICANT**

**RULING**

1. This matter has a chequered history. On 26<sup>th</sup> July, 2021, I granted temporary orders of stay to the Applicant, directed that the Motion dated 21<sup>st</sup> July, 2021 be served and scheduled the matter to 11<sup>th</sup> August, 2021 for further orders. Come that day and only the Respondent was represented and the Motion was thereby dismissed.
2. The Applicant then sought vide an application dated 28<sup>th</sup> August, 2021, to have the order of dismissal set aside and the dismissed motion be reinstated to hearing. That application was allowed by consent of the parties on 20<sup>th</sup> September, 2021 on which date directions were issued regarding the hearing of the Motion dated 21<sup>st</sup> July, 2021, inter alia, that the applicant files and serves the submissions within 14 days with the Respondent filing and serving theirs within 14 days of service thereof. Come 10<sup>th</sup> November, 2021 when the matter was listed to confirm compliance, only the Respondent had filed and served the submissions.
3. Nevertheless, the Court indulge the Applicant by giving them 14 more days within which to file the submissions. No such submissions were ever filed.
4. It is therefore clear that the mode of prosecution of the application dated 21<sup>st</sup> July, 2021 was by way of written submissions, a mode which the Applicant has not adhered to despite indulgence extended to it by the Court.
5. The history of this matter clearly reveals a party who is lethargic in pursuing his cause. The conduct of the Applicant in this matter is that of a person whose only desire is to delay the Respondent from enjoying her fruits of judgement by adopting delaying tactics and thereby obstructing the court of justice. Such conduct can only amount to an abuse of Court process. Court process ought to be invoked by genuinely aggrieved parties and not by parties whose only intention is to frustrate and vex the other parties to the proceeding. That is the conduct portrayed by the Applicant herein.
6. Accordingly, having considered the only material on record as regards the prosecution of the application dated 21<sup>st</sup> July, 2021 for which no material has been presented by way of prosecution, I find the said application unmerited and dismiss the same with costs to the Respondent.
7. It is so ordered.

**READ, SIGNED AND DELIVERED IN OPEN COURT AT MACHAKOS THIS 24TH DAY OF FEBRUARY, 2022.**

**G V ODUNGA**

**JUDGE**

**Delivered in the presence of:**

**Miss Gathenya for the applicant**

**Mrs Wambua for the Respondent**

**CA Susan**