



**Kimathi v Inspector General of Police & 3 others (Petition  
14 of 2019) [2022] KEHC 12312 (KLR) (28 July 2022) (Ruling)**

Neutral citation: [2022] KEHC 12312 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
PETITION 14 OF 2019  
EM MURIITHI, J  
JULY 28, 2022  
IN THE MATTER OF ARTICLE 40 OF THE CONSTITUTION OF KENYA  
AND  
IN THE MATTER OF ALLEGED CONTRAVENTION OF FUNDAMENTAL RIGHTS  
AND FREEDOMS UNDER ARTICLES 27, 40 AND 47 OF THE CONSTITUTION OF  
KENYA 2010**

**BETWEEN**

**JAMES KIMATHI ..... PETITIONER**

**AND**

**INSPECTOR GENERAL OF POLICE ..... 1<sup>ST</sup> RESPONDENT**

**THARAKA NITHI COUNTY GOVERNMENT ..... 2<sup>ND</sup> RESPONDENT**

**INDEPENDENT POLICE OVERSIGHT AUTHORITY ..... 3<sup>RD</sup> RESPONDENT**

**NATIONAL TRANSPORT & SAFETY AUTHORITY ..... 4<sup>TH</sup> RESPONDENT**

**RULING**

1. By a notice of motion dated October 26, 2021, the 2<sup>nd</sup> respondent County Government prayed for dismissal of the suit herein for want of prosecution on the grounds, principally, that it had been, at the time of the application:
  - a. One year six months since the petitioner's application dated September 19, 2019 was dismissed [and] the petitioner had failed to set the matter down for hearing on prosecution in suit allegation.



2. By the application of September 19, 2019, the petitioner sought orders of temporary injunction to restrain the respondents from arresting, detaining, and or otherwise interfering with his right to property and freedom of movement and to restrain the 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> respondents for arresting, detaining and or otherwise hindering movement of motor vehicle registration KCU 046M pending hearing and determination of the petition.
3. By its ruling on April 14, 2020, the court (Mabeya J) dismissed the application dated September 19, 2019 with cost to the 2<sup>nd</sup> and 3<sup>rd</sup> respondents.
4. The petitioner did not, despite service file any response to the present application herein or submissions therein as ordered on May 11, 2022, and on June 8, 2022, ruling was set for July 28, 2022.

### **Determination**

5. On perusal of the record, the last time, the petitioner and or his counsel attended court was on December 4, 2019 when directions for submissions were given for applications dated September 19, 2019 and November 27, 2019, the ruling upon which was given on April 14, 2020.
6. The petitioner has not since taken any step towards the hearing and determination of the suit herein.
7. Order 17 rule 2 of the *Civil Procedure Rules*, for power of the court to dismiss suit for want of prosecution. The 2<sup>nd</sup> respondent applicant has in detailed submission cited case law authorities on power of the court on application for dismissal for want of prosecution, the principles for the exercise of the discretion as discussed in *Nilesh Premchand Mulji Shah & Anor t/a Ketan Emporium v MD Popat & others & Another* [2016] eKLR; *Naftari Onyango v National Bank of Kenya* [2005] e KLR; *Biss v Lambeth* [1978] 2 All ER 125 and *Moses Muriungi Kamani v Shammi Kanjira Pparambil Thomas & 2 Others* [2014] eKLR.
8. An application for dismissal of suit for want of prosecution must demonstrate want of any steps towards prosecution of the suit for long period amounting to delay proscribed under the rules of court or inordinate delay, which delay is not satisfactorily explained and or excusable.
9. In exercising its discretion, the court may consider the prejudice if any, which may be occasioned by an order for the dismissal of the suit.
10. In this case the delay of over 1 ½ years for the date of the ruling dismissing interlocutory injunction application on April 14, 2020 and the filing of the application for dismissal of the suit of October 26, 2021, is not explained as there was no response to the 2<sup>nd</sup> respondent's application. The amount of delay in this case statutory qualifies under Order 17 rule 2 (3) and (5) of the *Civil Procedure Rules* (CPR) as inordinate in excusable delay for which the rule permits dismissal of the suit. Indeed, a suit stands as dismissed after 2 years where no step has been taken.
11. No prejudice has been shown as the petitioner has not, despite opportunity, responded to the application for dismissal. Yet on the part of the respondent, great prejudice remains by the very fact of a suit hanging like the Sword of Damocles in the wards of Lord Denning in *Biss v Lambeth* [1978] 2 All ER 125, especially with the public responsibility for the actions of the 2<sup>nd</sup> respondent Government.

### **Conclusion**

12. The court finds merit in this applicants application for the dismissal for want of prosecution of the petitioner's suit herein for which no step has been taken by the petitioner towards hearing and determination for over 2 years at the time of submissions before this ruling.



## **ORDERS**

13. Accordingly, for the reasons set out above, the court grants the 2<sup>nd</sup> respondent's application dated October 26, 2021 for the dismissal of the suit herein for want of prosecution.
14. The petitioners shall pay the costs of the petition to the 2<sup>nd</sup> respondent, to be agreed or taxed by the taxing officer of the court, in default of agreement.

Order accordingly.

**DATED AND DELIVERED THIS 28<sup>TH</sup> DAY OF JULY 2022.**

**EDWARD M. MURIITHI**

**JUDGE**

**APPEARANCES:**

M/s K. Mugambi & Co. Advocates for Petitioner.

M/S Saluny Advocates LLP for 2<sup>nd</sup> Respondent.

