



Republic v Kivuvo & another; Delina General Enterprises Limited (Interested Party) (Miscellaneous Criminal Application 19 of 2017) [2022] KEHC 12644 (KLR) (27 July 2022) (Ruling)

Neutral citation: [2022] KEHC 12644 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MAKUENI
MISCELLANEOUS CRIMINAL APPLICATION 19 OF 2017**

**GMA DULU, J
JULY 27, 2022**

BETWEEN

REPUBLIC PROSECUTOR

AND

ARUNA KIVUVO ACCUSED

AND

KENYA PIPELINE COMPANY LIMITED APPLICANT

AND

DELINA GENERAL ENTERPRISES LIMITED INTERESTED PARTY

RULING

1. Before me is an application dated 28th May 2021 filed by the Interested Party Delina General Enterprises Ltd.
2. The application was filed under Order 17 Rule 2(3) and Order 51 Rule 1 of the *Civil Procedure Rules* 2010, and section 1A, 1B and 3A of the *Civil Procedure Act* (Cap. 21) and seeks the following orders –
 - 1) That the application dated 2nd March 2017 be dismissed for want of prosecution.
 - 2) That the costs of this application and of the entire application dated 2nd March 2017 be paid by the applicant.
3. The application has grounds on the face of the Notice of Motion that following the filing of the application dated 2nd March 2017 BY Kenya Pipeline Co. Ltd, the court issued orders staying earlier orders given by Hon. G.M Mutiso – Makindu Principal Magistrate on 7th March 2017. That though the said application was fixed for hearing on 11th April 2017, no steps had been taken to prosecute the



application for close to 4 years, and in the meantime the applicant (Kenya Pipeline Co. Ltd) has been enjoying the stay orders in Criminal Case No. 1224 of 2012 which has remained unprosecuted.

4. The application was filed with a supporting affidavit sworn on 31st May 2021 by Mark Mutua Mumo advocates, in which it was emphasized that no steps had been take to prosecute the application dated 2nd March 2017 for close to 4 years.
5. The application has been opposed through grounds of opposition dated 18/08/2021 in the following terms –
 - 1) The application is frivolous and vexatious.
 - 2) The application is an abuse of court process and lacks merit.
6. The application was canvassed through written submissions. In this regard, I have perused and considered the submissions filed by M.M Mutua & company for the interested party and those filed by Munga Kibanga & company for the applicant (Kenya Pipeline Co. Ltd).
7. I have also seen and perused the application dated 2nd March 2017. It sought stay of the orders given in Makindu Mcr. Case No. 1224 of 2012, and also a review of this court’s orders issued on 5th December 2013.
8. This court on 7th March 2017 issued interim stay orders pending the hearing of the said application.
9. It is not in dispute that to date however, the application dated 2nd March 2017 has not been progressed. Even after this application for dismissal of the application dated 2nd March 2017 was filed and served, the applicant (Kenya Pipeline Co. Ltd) has not indicated that it wants to proceed with the said application. Instead they have filed grounds of opposition to the present application.
10. In my view, whether it is criminal or civil proceedings, this court has jurisdiction to dismiss a matter which has unduly delayed and remained pending in court for more than one year, and no progress has been recorded therein, even on the court’s own motion.
11. Coming to the present matter, Notice for the dismissal was served, though initiated by an Interested Party. Kenya Pipeline Co. Ltd has not indicated any interest to progress their application. The Director of Public Prosecutions who should have represented the public interest is not a party to the contest herein.
12. In my view, the Kenya Pipeline Co. Ltd, the applicants in the application dated 2nd March 2017, not having shown any indication that they want to prosecute that application, and more than 4 years having by now lapsed, the application merits being dismissed for want of prosecution.
13. Consequently, I find merits in the application dated 28th May 2021 and dismiss the application dated 2/3/2017. Interim stay orders granted by this court are hereby vacated. Parties will bear their respective costs, as the application was not filed by a party in the original criminal proceedings.

DELIVERED, SIGNED & DATED THIS 27TH DAY OF JULY, 2022, IN OPEN COURT AT MAKUENI.

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GEORGE DULU

JUDGE

