



Sifa Insurance Brokers Limited v Kings Developers Limited (Miscellaneous Civil Application 145 of 2016) [2022] KEHC 14189 (KLR) (Commercial and Tax) (21 October 2022) (Ruling)

Neutral citation: [2022] KEHC 14189 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS CIVIL APPLICATION 145 OF 2016**

A MABEYA, J

OCTOBER 21, 2022

BETWEEN

SIFA INSURANCE BROKERS LIMITED APPLICANT

AND

KINGS DEVELOPERS LIMITED RESPONDENT

RULING

1. This matter was lodged in court on March 24, 2022 by way of an originating summons. It then came up in court on several occasions and the last of them was July 11, 2017.
2. Thereafter, nothing happened until June 19, 2021 when the court issued a notice to show cause why the matter should not be dismissed for want of prosecution. By then, it had remained for 4 years without any action being taken to prosecute the same.
3. When the matter came up on June 23, 2021 for the hearing of the aforesaid notice, no one appeared on behalf of the applicant by Mr Luseno appeared for the respondent. He informed the court that the matter had been overtaken by events. The court thereby dismissed the same for want of prosecution.
4. On August 2, 2021, the applicant then lodged an application for re-instatement of the matter. The motion was brought under order 17 rules 2 and 6 of the *Civil Procedure Rules*.
5. The grounds were that the applicant was unaware that the suit had been dismissed for want of prosecution. That its erstwhile advocates on record did not advise that the matter had been listed for dismissal. That the said advocates had not advised while the suit remained unprosecuted for over a year and that their relationship had irretrievably broken down.
6. In the supporting affidavit, the applicant reiterated the same grounds set out above.



7. I have considered the application. The same was brought timeously as it was lodged less than two months after dismissal.
8. I have further considered the supporting affidavit. The application was never served upon the applicant's previous advocates to respond to the allegations levelled against them. In such an application, if an applicant wishes the court to lay the blame on its erstwhile advocate, such advocate must be served with such an application.
9. As regards the alleged complaint to the advocates complaints commission, the applicant only produced a letter from that commission asking from it several documents to support its allegations against that advocate. The letter was written on February 12, 2021, 4 months before the suit was dismissed. The question that arises, why did the applicant not take steps to prosecute the suit then or immediately thereafter?
10. In any event, nowhere in the entire affidavit has the applicant shown that it made any effort within the said period of 4 years to have the suit prosecuted. Suits do not belong to advocates. They belong to the parties. A party must show that it has done its own part in having its case prosecuted. Lodging cases in Court and leaving the parked there for eternity is unacceptable. Such cases are a cause for denial of swift justice to deserving cases.
11. Having failed to show cause, the application is dismissed with costs.
It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 21ST DAY OF OCTOBER, 2022.

A. MABEYA, FCI Arb

JUDGE

