



**Ngingo v Disciplinary Committee & another; Muiruri &  
17 others (Interested Parties) (Application 352 of 2014)  
[2022] KEHC 18107 (KLR) (Judicial Review) (25 November 2022) (Ruling)**

Neutral citation: [2022] KEHC 18107 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
JUDICIAL REVIEW  
APPLICATION 352 OF 2014  
J NGAAH, J  
NOVEMBER 25, 2022**

**BETWEEN**

**MUCHANGI NDUATI NGINGO ..... APPLICANT**

**AND**

**THE DISCIPLINARY COMMITTEE ..... 1<sup>ST</sup> RESPONDENT**

**LAW SOCIETY OF KENYA ..... 2<sup>ND</sup> RESPONDENT**

**AND**

**WAWERU MUIRURI & 17 OTHERS ..... INTERESTED PARTY**

**RULING**

1. The motion before court is dated December 10, 2020 and it is brought under order 12 rule 7 of the [Civil Procedure Rules](#), sections 1A, 1B and 3A of the [Civil Procedure Act](#).

It seeks orders to the effect that:

1. The dismissal order made on July 25, 2019 be set aside.
  2. Judicial review case No 352 of 2014 and the interim orders made therein be reinstated.
  3. The honourable court be pleased to order that the substantive motion be heard on the merits.
  4. Upon admission of the notice of motion the honourable court be pleased to fix an early hearing date for the same.
2. The application is supported by the affidavits of Muchangi Nduati Ngugi and Robert Havi Wanga. According to Mr Muchangi, he filed an application for leave to file a substantive motion for certain



prerogative orders on September 24, 2014. On the same date, leave was granted to file the suit. The same was to be done within 14 days of the date of granting the order.

While granting leave, the court also ordered that the same was to operate as a stay of the proceeding in Disciplinary Cause No 88 of 2008, before the respondent, pending the hearing and determination of the substantive motion. Soon thereafter, the applicant applied for proceedings from the Disciplinary Committee. He has deposed that the committee only supplied part of the proceedings.

3. Somewhere down the line, the applicant's advocates misplaced the applicant's office file as they moved offices. They sought to recover copies of the pleadings and affidavits filed from the court registry but in the process, they discovered that the suit had been dismissed for want of prosecution on July 25, 2019.

In his affidavit, Robert Havi Wanga, the learned counsel for the applicant swore that after he obtained leave, he filed the substantive motion as directed. However, he never obtained proceedings from the Disciplinary Committee. Counsel swore that he moved offices from one floor to another in Rehema House, before he settled at 680 Hotel office Suites. In the process of these relocations, the applicant's file got misplaced.

Apparently, the court file had also been missing but when he finally traced it, the learned counsel discovered that the matter had been dismissed on July 25, 2019. Counsel also noticed that the substantive notice of motion was not in the court file.

Ms Florence Muturi, the acting secretary of the Law Society of Kenya swore a replying affidavit on behalf of the 1<sup>st</sup> and 2<sup>nd</sup> respondents opposing the applicant's application.

4. Ms Muturi swore that this suit was procedurally dismissed on July 25, 2019 for want of prosecution after the applicant had been given opportunity but failed to show cause why the suit could not be dismissed.

And even after the matter had been dismissed, the applicant did not take any corrective measures until almost two years later when he filed this application. It is the respondent's case that the applicant has never been interested in prosecuting his case.

I have considered the application and the response thereto. I have also given due consideration to the submissions filed by both the applicant and the 1<sup>st</sup> and 2<sup>nd</sup> respondents.

5. The record shows that the applicant obtained leave to file a substantive motion for prerogative orders of *certiorari* and prohibition on September 24, 2014. He also succeeded in persuading the court to grant him the order of stay. That order was granted in the following terms;

3. That the leave granted herein do (sic) operate as a stay of the proceedings in Disciplinary Cause No. 85 of 2008 pending the hearing and determination of this matter".

6. In that order, the applicant was directed to file the substantive motion within 14 days.

As the applicant himself has admitted, the notice of motion is not on record and, therefore, there is no evidence that the applicant or his counsel complied with this direction and filed the motion as directed.

7. I am unable to accept the applicant's argument that he filed the suit except that his office file got lost. This is because it cannot be a coincidence that the motion is missing from the court file and at the same time, the applicant has lost his office file. My assessment of the circumstances of the applicant's application is that he did not file the motion as directed or at all. If he did, the burden was always on him to prove that the motion was filed and was so filed within the prescribed timelines. He has not discharged this burden and therefore it is safe for this honourable court to proceed on the presumption that the motion was not filed.



And even assuming that the applicant had filed the motion, no satisfactory explanation has been given why he never took any action towards prosecuting the suit until it had to be dismissed on July 10, 2019, five years after the substantive suit ought to have been filed.

8. The explanation that the applicant had, for all that time, been seeking proceedings from the Disciplinary Committee does not hold for the simple reason that, first, it does not stand to reason that the applicant could have been looking for proceedings for five years and, at any rate, there is no evidence that the applicant had been engaged in this exercise during that period.

Secondly, and more importantly, the order for certiorari was sought to quash, not the proceedings, but the decisions of the Disciplinary Committee respectively dated November 4, 2013 and July 7, 2014. What's more, copies of these decisions were exhibited to the applicant's own affidavit. The two decisions were sufficient for purposes of obtaining the order of certiorari and, in any event, nowhere in the applicant's affidavits has it even been suggested that the proceedings of the Disciplinary Committee would be necessary.

9. The prayer for the order of prohibition would also not have required the proceedings to be exhibited for the order to be granted. In law, it is not mandatory that in order to stop proceedings, the impugned proceedings should accompany the application for the order of prohibition.

The lackadaisical attitude with which the applicant approached his suit is also apparent from the time it took him to file the present application. Even after the suit had been dismissed in July 2019, it was not until May 2021, almost two years later, that the applicant filed the present application.

I find the applicant's claim that he had been inquiring from the court the whereabouts of the court file to be wanting because he has not provided a single letter addressed to and received by the court demonstrating the applicant's efforts to trace the court file. The insinuation that the court file had been missing and that the applicant had been making efforts to trace it has no factual backing.

10. I would conclude, for the reasons I have given, that the applicant's application is bad in law and misconceived. Having held that no suit was filed, there is nothing to reinstate assuming the applicant had made a case for reinstatement.

In any event, in the absence of a suit and the application for leave having been spent, the dismissal order of July 10, 2019 was more or less superfluous and of no legal consequence.

I hereby dismiss the applicant's application. Parties will bear their own costs.

**DATED, SIGNED AND DELIVERED AT NAIROBI ON 25 NOVEMBER, 2022.**

**NGAAH JAIRUS**

**JUDGE**

