



Abdulla (t/a Gulshan Hotel) v Tayabali & another (Succession Cause 380 of 2010) [2021] KEHC 9772 (KLR) (26 November 2021) (Ruling)

Neutral citation: [2021] KEHC 9772 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
SUCCESSION CAUSE 380 OF 2010
JN ONYIEGO, J
NOVEMBER 26, 2021**

THE APPLICATION IS HEREBY DISALLOWED AND THE RESPONDENT GIVEN AN OPPORTUNITY TO EXPEDITE THE PROCEEDINGS BY FIXING A HEARING DATE FOR THE PENDING APPLICATION. MENTION ON 27TH JANUARY, 2020 FOR DIRECTIONS. COSTS SHALL BE IN THE CAUSE.

BETWEEN

**IBRAHIM SHEIKH ABDULLA T/A GULSHAN HOTEL APPLICANT
T/A GULSHAN HOTEL**

AND

**ZAFFER EBRAHIM TAYABALI 1ST RESPONDENT
MUSTAFA EBRAHIM TAYABHOY KARIMJEE 2ND RESPONDENT**

RULING

1. Vide an application dated March 25, 2020, the applicant sought dismissal of the objection/summons dated September 22, 2016 and application dated July 1, 2016 for want of prosecution. The application is based on the ground that the matter has been pending since February 4, 2020 to date without any action being taken hence the need for dismissal.
2. In response, the respondent filed a replying affidavit sworn on May 20, 2020 claiming that; the delay was partly occasioned by the Covid 19 hence interruptions of court proceedings; the application is bad in law and misconceived as it is brought under a Order 17 rules 2 and 3 a wrong provision which is only applicable in civil and not Probate and Administration matters.
3. That the Covid 19 travel restrictions could not allow some witnesses among them the petitioner to travel from United Arab Emirates to Kenya. That the respondent is ready and willing to prosecute the application hence the need to be given an opportunity to ventilate the same.



4. I have considered the application herein and response thereto. There is no dispute that the suit has remained inactive since February 4, 2020. Indeed, Covid 19 struck Kenya from March 6, 2020 to date. I take judicial notice that at the early stages of Covid 19, there was confusion and interruptions in court proceedings. Things started to stabilize towards the end of last year. I am also aware that there were various international travel restrictions but that was not a major hindrance as virtual proceedings took over. Although not fully convinced with the explanation given, there are some mitigating factors for the delay among them Covid pandemic.
5. It is trite that a court should act cautiously not to deny a litigant an opportunity to ventilate his case unless the reasons given for the delay are not convincing and that it will amount to a travesty of justice to continue entertaining the case further.
6. In the instant case, I am persuaded somehow, that Covid did contribute to the delay. Since the respondent has expressed interest to prosecute the matter and taking into account the sensitivity of the matter at hand, I do not find any prejudice to be suffered by the applicant by giving the respondent an opportunity to ventilate his case. Accordingly, the application is hereby disallowed and the respondent given an opportunity to expedite the proceedings by fixing a hearing date for the pending application. Mention on January 27, 2020 for directions. Costs shall be in the cause.

Dated, signed and delivered virtually at Mombasa this 26th day of November 2021.

J. N. ONYIEGO

JUDGE

