



**Obiero v Piotto (Environment & Land Case 314 of 2016)
[2023] KEELC 20045 (KLR) (21 September 2023) (Ruling)**

Neutral citation: [2023] KEELC 20045 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 314 OF 2016
LN MBUGUA, J
SEPTEMBER 21, 2023**

BETWEEN

PIUS OYUYO OBIERO PLAINTIFF

AND

LYDUSHKA HORNIK PIOTTO DEFENDANT

RULING

1. Before me is an application dated November 1, 2022 where the plaintiff is seeking the setting aside of the orders of October 31, 2022 in which his earlier application dated July 15, 2022 to have the suit reinstated was dismissed. The suit had been dismissed way back on February 26, 2018.
2. The matter was mentioned in open court on July 10, 2023 where counsel Makori for the plaintiff informed the court that no responses were ever filed in respect of the main originating summons and the applications and that service had been effected through substituted service.
3. As at the time the court was mentioning the matter, the court had been informed that there exists another related matter case No. OS 23/2023. The plaintiff's counsel objected to any consolidation of the two matters.
4. Mr. Kahuro addressed the court stating that the respondent died in year 2006, and that the plaintiff was aware of this fact as at the time the suit was filed. He contended that his client is one of the administrators of the estate of the deceased. It was argued that the suit is a nullity as it was filed against a deceased person. The court was also informed that the suit has been dismissed twice and has never been reinstated.
5. Mr. Muturi who apparently appears in the other matter avers that indeed the respondent is deceased and the suit is hence a nullity.



6. In rejoinder, counsel Makori for the plaintiff stated that she was not aware of the death of the respondent and that the persons addressing the court have not indicated their interest in the matter hence they have no right of audience.
7. I have considered the arguments raised herein. The issues for determination are whether this suit should be reinstated by way of allowing the earlier application of July 15, 2022, whether the counsels opposing the suit have a right of audience before this court, whether this suit is a nullity, and whether this matter should be consolidated with others like ELC OS 23/2023.
8. On reinstatement, I have considered the litigation herein and I note that the suit was filed way back on April 1, 2016. The plaintiff did not hasten to prosecute the suit; thus when the matter came up for hearing on September 26, 2017 and the plaintiff was not ready to proceed, the court gave a last adjournment for the case to be heard on February 26, 2018. Come the date of February 26, 2018 and the plaintiff and his advocate were absent hence the suit was dismissed.
9. An application to have the suit reinstated was not filed until about 3 ½ years later on July 15, 2022. This court gave strict directions on the prosecution of the said application. The application was given a hearing date on October 31, 2022 but on the said date, the plaintiff and his advocate were absent, hence the said application was dismissed.
10. The current application dated November 1, 2022 was hence filed to set aside the orders of October 31, 2022.
11. In the case of *James Yanga Yeswa v Bob Morgan Services limited* [2019] eKLR, the court set out the principles to be considered in an application for reinstatement of a suit. The issue of unexplained delay is a paramount consideration.
12. The applicant has not given a plausible explanation as to why he never took steps to prosecute the suit such that it was dismissed, nor has he stated as to why it took him close to 3½ years to file the application for reinstatement which too was dismissed.
13. It is a cardinal principle in our Constitution that there should be expeditious delivery of justice” as set out in Article 159 (2) (b) of the constitution which codifies the 17th century maxim that “justice delayed is justice denied.”
14. In the case of *Mobile Service Station v Mobile Oil Kenya Ltd & Another* [2004] eKLR, Warsame J (as he then was) stated that

“I must say that courts, are under a lot of pressure from back logs and increased litigation, therefore it is in the interest of justice that litigation must be conducted expeditiously and efficiently”

Also see my decision in *Lawrence Kinyua Mwai v. Nyariginu Farmers Co. Ltd & Another* [2019] eKLR.
15. It is trite law that a matter once filed does not belong to the advocate but to the litigant who bears the responsibility to ensure that his/her case is expedited. See *Mwangi Gachiengu & 2 Others vs Mwaura Gitbuku & Another* [2019] eKLR.
16. Despite the foregoing analysis, I note that the applicant now appears keen to prosecute the case. In that regard, the orders of October 31, 2022 are hereby vacated, such that the application of July 15, 2022 is allowed and the suit is hereby reinstated but on condition that the same must be heard expeditiously.



17. On whether counsel Kahura and counsel Muturi have a right of audience, I find that their clients are not parties to this suit. However counsel Kahura has informed the court that they act for one of the administrators of the deceased respondent, thus he has laid a basis for addressing the court in this matter. Mr. Muturi did not lay a basis as to why he should be granted audience in this case. In the circumstances, Mr. Kahura will continue to address the court in subsequent proceedings, while Mr. Muturi his hereby denied right of audience before this court.
18. On whether the suit is a nullity, I find that an averment has been made by Mr. Kahura that the respondent is deceased. Death is a serious issue and the court must be given further and better particulars to determine whether this suit is a nullity. In the circumstances I direct that such particulars of the death of the respondent. i.e a death certificate be availed to this court to enable the court give further directions.
19. On consolidation, the court has not been given full particulars of the nexus between this case and OS 23/2023. I hence decline to grant any order or consolidation. However, as much as it will be practicable, the suits shall be prosecuted at the same time.
20. The end result is that the application dated November 1, 2022 is allowed with no orders as to costs and the suit is reinstated.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 21st DAY OF SEPTEMBER, 2023 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:-

Ann Makori for plaintiff

Kahura for Administrator of Daniella

Court Assistant: Eddel

