



**Wanjiru (Suing as the Administrator of the Estate of Cyrus Gathira Ndiritu  
- Deceased) v Golden Lane Limited & another (Environment & Land Case  
E955 of 2017) [2023] KEELC 20017 (KLR) (21 September 2023) (Ruling)**

Neutral citation: [2023] KEELC 20017 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO  
ENVIRONMENT & LAND CASE E955 OF 2017  
LC KOMINGOI, J  
SEPTEMBER 21, 2023**

**BETWEEN**

**IRENE WANJIRU (SUING AS THE ADMINISTRATOR OF THE ESTATE OF  
CYRUS GATHIRA NDIRITU - DECEASED) ..... APPLICANT**

**AND**

**GOLDEN LANE LIMITED ..... 1<sup>ST</sup> RESPONDENT**

**KENYA ELECTRICITY TRANSMISSION COMPANY LIMITED .... 2<sup>ND</sup>  
RESPONDENT**

**RULING**

1. This is the Notice of Motion dated 8<sup>th</sup> July 2022 brought under;  
  
(Under sections 1A, 1B,3A and 63 (e) of the [Civil Procedure Act](#), order 51 rule 15 of the [Civil Procedure Rules](#) and all other enabling provisions of the law)
2. It seeks orders:
  1. Spent.
  2. That the order dismissing this suit be and is hereby set aside.
  3. That this suit be and is hereby reinstated for purposes of proceedings with the hearing of the main suit.
  4. That costs be in the main cause.
3. The grounds are on the face of the application and are set out in paragraphs (1) to (10).



4. The Application is supported by the affidavit of Stephen Gitonga Mureithi, Advocate for the plaintiff, sworn on the 8<sup>th</sup> July 2022.

5. The application is opposed. There is a Replying Affidavit sworn by Alfred Ochieng Advocate for the 2<sup>nd</sup> defendant on the 6<sup>th</sup> October 2022.

It appears the 1<sup>st</sup> defendant did not file any response to the Notice of Motion.

6. On the 13<sup>th</sup> October 2022 the court with the consent of parties directed that the Notice of Motion be canvassed by way of written submissions.

7. The Plaintiff's/Applicant's submissions are dated 27<sup>th</sup> March 2023. They raise three issues for determination;

1. Whether the Plaintiff/Applicant was properly notified of the intended dismissal.
2. Whether the court ought to set aside the order that dismissed the suit for want of prosecution.
3. Whether reinstating this suit will cause prejudice to the parties herein in view of the above.

8. Counsel submitted that the plaintiff was not served and/or did not come across any notice to show cause pertaining to this matter.

He has put forward the cases of *Associated Warehouse Co. Ltd & Others v Trust Bank Ltd* (2004) eKLR; *Josphat Ogidi sasea v Wycliffe Wabwile Kiiya* (2022) eKLR.

9. Counsel further submitted that this court needs to consider the extent and steps taken by the plaintiff in prosecuting this matter before the pandemic. He has put forward the cases of *Shah v Mbogo* (1979) EA 116 quoted with approval in the case of *John Mukuha Mburu v Charles Mwenga Mburu* (2019)eKLR, *Patel v EA Cargo Handling Services Ltd* (1974) EA 75; *CMC Holdings Limited v Nzioki* (2004) 1 KLR 73; *Ceven Limited v Erastus Gichuhi & 4 Others* (2021)eKLR.

10. It is also submitted that the plaintiff will suffer great prejudice if this matter remains dismissed. He has put forward the cases of *Ivita v Kyumbu* (1984)KLR 441 *Richard Ncharpi Leiyagu v IEBC & 2 Others* (2013) eKLR.

11. He urges the court to consider that any party claiming to suffer prejudice or harm should satisfy the court as to how exactly the said prejudice will occur should the matter be reinstated.

He prays that the application be allowed.

12. The 1<sup>st</sup> Defendant's/Respondent's submissions are dated 22<sup>nd</sup> February 2023. Counsel submitted that the matter was listed as coming up for Notice to show cause in the court's official website and in the cause list. That this served as sufficient notice to the parties.

13. Further that the same was listed in the daily cause list uploaded on Kenya Law Reports and judiciary official website.

He has put forward the case of *Fran Investments Limited v G4s Security Services Limited* (2015) eKLR;

*Utalii Transport Company Limited & 3 Others v NIC Bank & Another* (2014) eKLR;  
*Mobile Kitale Service Station v Mobil Oil Kenya Limited & Another* (2004)eKLR

14. It is also submitted that the Plaintiff/Applicant is guilty of inordinate delay in bringing the present application and that no sufficient reasons have been given to warrant the reinstatement of this suit. He prays that the Application be dismissed with costs.



15. The 2<sup>nd</sup> Defendant's/Respondent's submissions are dated 5<sup>th</sup> December 2022. Counsel submitted that the Plaintiff/Applicant has been indolent and the reasons for the failure to prosecute the suit are mere excuses. It is further submitted that the Plaintiff/Applicant took action after being served with a taxation notice by the 1<sup>st</sup> Defendant.

He has put forward the case of *Josphat Oginda Sasia v Wycliffe Wabwile Kiiya* (2022) eKLR.

16. It is also submitted that the Plaintiff/Applicant has not sufficiently demonstrated that she was not served with the Notice to show cause because both defendants were present during the hearing of the Notice to Show Cause.

He has put forward the case of *Elosy Murugu Nyaga v Tharaka Nithi County Government & Another* (2020) eKLR. He prays that the application be found to be unmerited and be dismissed with costs.

17. I have considered the Notice of Motion, the grounds and the affidavit in support. I have also considered the responses thereto, the written submissions and the authorities cited. The issue for determination is whether this application is merited.

18. I have gone through the court record. On the 31<sup>st</sup> May 2019, the matter was mentioned before the Hon. Deputy Registrar. Mr. Mitambo held brief for Mr. Gitonga for the plaintiff and the matter was fixed for Notice to show cause as to why it could not be dismissed for want of prosecution on the 16<sup>th</sup> October 2019. On 16<sup>th</sup> October 2019 the counsel held brief for Mr. Gitonga for the plaintiff and the matter was fixed for directions on 26<sup>th</sup> February 2020 on the 26<sup>th</sup> February 2020, parties were absent, it is important to note that at this time the courts were still operating normally and had not been closed due to the Covid 19 Pandemic restrictions.

19. It is also clear from the chronology of events that by 31<sup>st</sup> May 2019 the plaintiff was aware that the matter was due to be dismissed for want of prosecution yet she took no steps to prosecute the matter. This is contrary to counsel's averments that the restrictions owing to the Covid 19 pandemic was the main reason for the delay.

20. The matter was fixed for directions on the 30<sup>th</sup> July 2020, and on 2<sup>nd</sup> December 2020 but the parties did not appear.

On the 9<sup>th</sup> March 2021 the matter came up before the Honourable Deputy Registrar but no party appeared. On the 19<sup>th</sup> April 2021 the Honourable Deputy Registrar fixed the matter for Notice to show cause as to why the same should not be dismissed for want of prosecution on the 15<sup>th</sup> June 2021.

21. On the 15<sup>th</sup> June 2021, there was no appearance for the Plaintiff/Applicant and the suit was dismissed for want of prosecution with costs to the defendants.

It is clear from the Court record that the plaintiff was given several opportunities to put her house in order but she did not. she appears she had lost interest in the suit.

22. I also note that this application was filed on 8<sup>th</sup> July 2022 more than one year after the suit was dismissed. No explanation has been given for the delay. In the case of *Utalii Transport Company Limited & 3 Others v NIC Bank Limited and Another* (2014) eKLR it was held thus;

“Whereas there is no precise measure of what amounts to inordinate delay and whereas what amounts to inordinate delay will differ from case to case depending on the circumstances of each case; the subject matter of the case; the nature of the case; the explanation given for the delay; and so on and so forth. Nevertheless, inordinate delay should not be difficult to ascertain once it occurs; the litmus test being that it should be an amount of delay



which leads the court to an inescapable conclusion that it is inordinate and therefore inexcusable....“

I find that the explanation for the delay given by the Plaintiff/Applicant herein is inexcusable, given that she was aware the suit was due for dismissal as early as 2019, two years before the actual dismissal.

It was her duty to take steps to prosecute the matter since she is the one who had dragged the Defendants to court.

23. I am not satisfied with the explanation given by the Plaintiff/Applicant for the delay in bringing this application.

24. The Plaintiff/Applicant’s claim that she was not served with the Notice of dismissal cannot stand.

In the case *Fran Investments Limited v G4s Security Services Limited* (2015) eKLR the court stated thus;

“Order 17 rule 2 (1) of the *Civil Procedure Rules* does not require service of notice; it used the word “given notice”

“The court may give notice of dismissal through its official website or through the cause list. And these mediums will constitute sufficient notice for purposes of order 17 rule 2(1) of the *Civil Procedure Rules*”.

25. The fact that counsel for the defendants were present during the dismissal is proof that notice was given. I find that the Plaintiff/Applicant had notice of the dismissal of the suit.

26. I also note that there is a pending suit being Milimani ELC 78 of 2016 involving the same parties.

27. In conclusion, I find no merit in this application and the same is dismissed. Each party shall bear own costs.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 21<sup>ST</sup> DAY OF SEPTEMBER 2023.**

**L. KOMINGOI**

**JUDGE.**

Ms. Muhia for Mr. Gitonga for the Plaintiff/Applicant.

N/A for the 1st Defendant/Respondent.

Mr. Achola for the 2nd Defendant/Respondent.

Court Assistant – Mutisya.

