



PP Flora Limited & another v Development Bank of Kenya Limited (Environment & Land Case 13 of 2018) [2022] KEELC 3790 (KLR) (30 June 2022) (Ruling)

Neutral citation: [2022] KEELC 3790 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE 13 OF 2018
FM NJOROGE, J
JUNE 30, 2022**

BETWEEN

PP FLORA LIMITED 1ST PLAINTIFF

PRAKASH CHANDER RAM 2ND PLAINTIFF

AND

DEVELOPMENT BANK OF KENYA LIMITED DEFENDANT

RULING

1. The defendant vide the application dated January 28, 2022 and filed on February 08, 2022 seeks the following orders:
 - (1) That the Honorable Court be pleased to dismiss this suit for want of prosecution.
 - (2) That costs of this application and suit be provided for.
2. The grounds on the face of the application and the supporting affidavit are as follows: that the plaintiff filed the present suit on January 23, 2018 together with an application for injunction; that the court delivered a ruling on November 27, 2018 restraining the defendant from exercising its right as the chargee pending the hearing and determination of this suit; that the said interim injunction is prejudicial to the defendant; that it has been four years since the suit was filed and the plaintiff has not taken any steps to prosecute it; that in view of the delay, it is in the interest of justice that the suit be dismissed as prayed.
3. Despite the plaintiff being given time to file a response to the application none was filed and neither of the parties filed their submissions.
4. After considering the application, the only issue for determination is whether this suit should be dismissed for want of prosecution. Order 17 rule 2 of the [Civil Procedure Rules](#) provides as follows:



- (1) In any suit in which no application has been made or step taken by either party for one year, the court may give notice in writing to the parties to show cause why the suit should not be dismissed, and if cause is not shown to its satisfaction, may dismiss the suit.
 - (2) If cause is shown to the satisfaction of the court it may make such orders as it thinks fit to obtain expeditious hearing of the suit.
 - (3) Any party to the suit may apply for its dismissal as provided in sub-rule 1.
 - (4) The court may dismiss the suit for non-compliance with any direction given under this Order.
 - (5) A suit stands dismissed after two years where no step has been undertaken.
 - (6) A party may apply to court after dismissal of a suit under this Order.
5. The court in the case of *Argan Wekesa Okumu vs Dima College Limited & 2 others* [2015] eKLR stated as follows regarding the principles the court has to consider in determining whether a suit should be dismissed for want of prosecution:

“The principles governing applications for dismissal for want of prosecution are well settled and have been established by a long line of authorities. The applicant must show that the delay complained of is inordinate, that the inordinate delay is inexcusable and that the defendant is likely to be prejudiced by such delay. As such the 3rd defendant in this case must meet the burden of proof in seeking the dismissal of the plaintiff’s case for want of prosecution see the case of *Ivita vs Kyumbu*(1984) KLR 441. Further to this, the decision of whether or not to dismiss a suit is discretionary and this court must exercise such discretion judiciously. Additionally, each case must be decided on its own facts keeping in mind that a court should strive to sustain a suit where possible rather than prematurely terminating the same.”

6. As was determined in the above matter, the test the court has to apply in determining an application for dismissal for want of prosecution of a suit, is whether the delay is prolonged and inexcusable and if it is, whether the delay can be excused and whether justice done despite the delay.
7. This matter was filed on January 23, 2018. The plaintiffs had filed an application together with the plaint which application was heard and a ruling delivered on November 27, 2018. In the ruling the court granted an injunction restraining the defendant from selling the suit properties pending the hearing and determination of the suit. After the said ruling was delivered, the plaintiffs did not take any step to prosecute the case.
8. The defendant’s application for dismissal of the suit is not opposed by the plaintiffs. It is this court’s view that the delay of three years in prosecuting the matter has been long and inexcusable and it is prejudicial to the defendant who has for that period been hindered from acting in accordance with the agreement between the parties. Consequently, I hereby dismiss the instant suit with costs to the defendant.

DATED, SIGNED AND DELIVERED AT NAKURU VIA ELECTRONIC MAIL ON THIS 30TH DAY OF JUNE, 2022.

MWANGI NJOROGE

JUDGE, ELC, NAKURU

