



Bereki v Njamba Mwireri Investment Ltd (Environment and Land Case Civil Suit 1635 of 2016) [2022] KEELC 15619 (KLR) (7 December 2022) (Ruling)

Neutral citation: [2022] KEELC 15619 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE CIVIL SUIT 1635 OF 2016
LN MBUGUA, J
DECEMBER 7, 2022**

BETWEEN

ALI MOHAMED BEREKI PLAINTIFF

AND

NJAMBA MWIRERI INVESTMENT LIMITED DEFENDANT

RULING

1. This suit was filed vide a plaint dated September 6, 2016 and it subsequently lay dormant until March 5, 2018 when the court gave an ultimatum that an affidavit of service was to be filed within 30 days to indicate that summons to enter appearances had been duly served, and in default, the suit was to stand as dismissed. The case was to be mentioned on July 19, 2018. Come the date of July 19, 2018 and there was no appearance for the plaintiff. The suit was dismissed.
2. The plaintiff filed an application dated July 30, 2019 seeking orders to bring in a new advocate and also to set aside the orders of July 19, 2018. Again the plaintiff did not prosecute that application and it was eventually dismissed on December 14, 2020.
3. The plaintiff has now brought forth another application dated July 6, 2022 seeking orders to bring in the new advocate and to set aside the orders of July 19, 2018 and December 14, 2020. The plaintiff contends that he only recently discovered that the suit was dismissed. It is averred that the plaintiff's advocate were never served with the date of December 14, 2020.



4. I have considered all the arguments raised herein. The application is *ex parte* since the defendant has never been brought on board. In the case of *Gideon Sitelu Kanchella v Julius Lekakeny ole Sukwi & 2 others* [2018] eKLR, the court stated that:

“As a court of law we have a duty in principle to look at what the application is about and what it seeks. It is not automatic that for any unopposed application, the court will as a matter of course grant the sought orders.”
5. It follows that even if the application is unopposed the court is duty bound to examine the merits of the same.
6. One of the cardinal principles in our constitution is “the expeditious delivery of justice” –see article 159 (2) (b) of the *Constitution of Kenya*, which in effect codifies the 17th century maxim of “justice delayed is justice denied”. This means that if justice is not provided in a timely manner to the parties, it loses its importance and it violates the human rights of the litigants and their families.
7. In the case of *Mwangi S Kimenyi v Attorney General & another* [2014] eKLR, the court stated that;

“The decision whether a suit should be re-instated for trial is a matter of justice and it depends on the facts of the case”.
8. The records herein indicates that before the suit was dismissed on July 19, 2018, the matter had stayed in limbo for a period of close to 2 years. After the dismissal, the application to reinstate the same was not filed until another year had lapsed on July 30, 2019.
9. Again after the dismissal of the application of July 30, 2019 on December 14, 2020, the current application was only filed after a hiatus of 2 years on July 6, 2022!.
10. The records further indicate that on November 20, 2019, Mr Busaidy appearing for the plaintiff was in court before the Deputy Registrar when the application to reinstate the suit (the one dated July 30, 2019) was given a date before the judge on May 11, 2020, but on that day of May 11, 2020, there was no appearance for the plaintiff.
11. In the case of *Habo Agencies Limited v Wilfred Odhiambo Musingo* [2015] eKLR, cited in *Tana and Athi Rivers Development Authority vs Jeremiah Kimigho Mwakio & 3 others* (2015) eKLR, it was held that;

“It is not enough for a party in litigation to simply blame the Advocates on record for all manner of transgressions in the conduct of the litigation. Courts have always emphasized that parties have a responsibility to show interest in and to follow up their cases even when they are represented by counsel.”
12. I find that the applicant has been complacent and casual in the prosecution of the case and his various applications. There is no tangible evidence to indicate that the plaintiff will remain present for the prosecution of the case if the suit was brought back to life. As such, I find that the application is not merited. The same is hereby dismissed with no orders as to costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 7TH DAY OF DECEMBER, 2022 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE



In the presence of:-

Busaidy for Plaintiff/Applicant

Court Assistant: Eddel/Vanilla

