

**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL CASE NO. 532 OF 2000**

JUSTINE GITONGA MATE PLAINTIFF

VERSUS

MWONI HOUSING CO-OPERATIVE SOCIETY

LTD & ANOTHER DEFENDANT

RULING

Dismissal of suits for want of prosecution has as one of its usefulness, the object of getting rid of litigation which merely lies fallow with the likely prejudice which may flow from delays, such as loss of memories and documents, unavailability of witnesses, and increase in costs. It also serves to clear courts of redundant records which merely fill space and confuse judicial returns, and paint a negative picture of the working of the courts for faults of parties which the public never gets to know of as they condemn the slow pace of the civil justice system, in ignorance of the truth that the sluggish progress of litigation is mostly due to parties' tardiness and recalcitrance in their own causes.

This being the true function of dismissal of suits for want of prosecution, once it is not disputed that the party concerned is abusing the judicial process by filing a case for merely letting it lie in the court registry and archives, it does not matter who brings that fact to the notice of the court. Even a court clerk can bring up the file to the court for dismissal of suit. Even an advocate without a practicing certificate may help the court in this motion they do so under another provision of the Rules. Technicality has no place here. Acting without holding a current valid practicing certificate may found the necessary disciplinary process against the advocate concerned; but it would not nullify or render void a judicial act prompted to such a person where such prompting serves the interests of justice and results in the protection of the court against its abuse or abuse of the legal process.

For these reasons, I expected the applicants to come to the court to plead their reasons for not prosecuting their suit; but instead of them explaining their inaction and lack of diligence, they come to cling on a barren technicality as if they had a statutory or inherent and inalienable right to file a suit and then fall to sleep for months or years as they please.

Such an approach works against the principle that justice delayed is justice denied.

The application is lacking in merit. It is dismissed. Orders accordingly. This Ruling is made *ex tempore* .

R. KULOBA

JUDGE

2.7.2003