



**Sigei v Kiprono (Environment & Land Case 256 of 2016)
[2024] KEELC 3557 (KLR) (11 April 2024) (Ruling)**

Neutral citation: [2024] KEELC 3557 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE 256 OF 2016**

A OMBWAYO, J

APRIL 11, 2024

BETWEEN

WILLIAM KIPGENTICH SIGEI PLAINTIFF

AND

KIPSANG ARAP KIPRONO DEFENDANT

RULING

1. The application before court is dated 1st March 2024. The applicant seeks reinstatement of the suit that was dismissed for want of prosecution on 10th March 2020.
2. The constitutional provisions on determination of cases in a timely manner is underpinned in Article 159 of the *Constitution*, which provides as follows:

“Judicial authority

- (1) Judicial authority is derived from the people and vests in, and shall be exercised by, the courts and tribunals established by or under this Constitution.
- (2) In exercising judicial authority, the courts and tribunals shall be guided by the following principles—
 - (a) justice shall be done to all, irrespective of status;
 - (b) justice shall not be delayed;
 - (c) alternative forms of dispute resolution including reconciliation, mediation, arbitration and traditional dispute resolution mechanisms shall be promoted, subject to clause (3);



- (d) justice shall be administered without undue regard to procedural technicalities; and
 - (e) the purpose and principles of this Constitution shall be protected and promoted.
- (3) Traditional dispute resolution mechanisms shall not be used in a way that—
- (a) Contravenes the Bill of Rights;
 - (b) is repugnant to justice and morality or results in outcomes that are repugnant to justice or morality; or
 - (c) is inconsistent with this Constitution or any written law.”
3. This court observes that it is the duty of the court, litigants, as well as advocates, to ensure that matters are concluded expeditiously without inexcusable delay. Sections 1A and 1B, of the [Civil Procedure Act](#), Cap 21, Laws of Kenya, are relevant, with regard to this and provides as follows:

“ 1A. Objective of Act

- (1) The overriding objective of this Act and the rules made hereunder is to facilitate the just, expeditious, proportionate and affordable resolution of the civil disputes governed by the Act.
- (2) The Court shall, in the exercise of its powers under this Act or the interpretation of any of its provisions, seek to give effect to the overriding objective specified in subsection (1).
- (3) A party to civil proceedings or an advocate for such a party is under a duty to assist the Court to further the overriding objective of the Act and, to that effect, to participate in the processes of the Court and to comply with the directions and orders of the Court.

1B. Duty of Court

- (1) For the purpose of furthering the overriding objective specified in section 1A, the Court shall handle all matters presented before it for the purpose of attaining the following aims—
 - (a) the just determination of the proceedings;
 - (b) the efficient disposal of the business of the Court;
 - (c) the efficient use of the available judicial and administrative resources;
 - (d) the timely disposal of the proceedings, and all other proceedings in the Court, at a cost affordable by the respective parties; and
 - (e) the use of suitable technology.”



4. In the case before me, no sufficient reason has been given for non-attendance by Kipsang & Co advocates on the dates scheduled by the notice to show cause and yet they were served.
5. The factors taken into account or consideration for the purpose of reinstatement of suits are numerous, and were addressed in *Ivita vs. Kyumbu* [1984] KLR 441 (Chesoni J), where the court stated:

“The test is whether the delay is prolonged and inexcusable, and, if it is, can justice be done despite such delay. Justice is justice to both the Plaintiff and Defendant; so both parties to the suit must be considered and the position of the judge too, because it is no easy task for the documents, and, or witnesses may be missing and evidence is weak due to the disappearance of human memory resulting from lapse of time. The Defendant must however satisfy the court that it will be prejudiced by the delay or even that the plaintiff will be prejudiced. He must show that justice will not be done in the case due to the prolonged delay on the part of the plaintiff before the court will exercise its discretion in his favour and dismiss the action for want of prosecution. Thus, even if delay is prolonged if the court is satisfied with the plaintiff’s excuse for the delay, the action will not be dismissed, but it will be ordered that it be set down for hearing at the earliest available time.”

6. No reason is given by the current advocate for failure by the plaintiff to prosecute the suit before the notice to show cause was issued. The application has been filed more than three years after dismissal and without explanation.
7. Reinstatement of a suit is at the discretion of the court, which discretion ought to be exercised in a just manner, as was held in *Bilha Ngonyo Isaac vs. Kembu Farm Ltd & another & another* [2018] eKLR ((JN. Mulwa J), which echoed the decision of the court in *Shah vs. Mbogo & Another* (1967) EA 116 (Harris J), where the court stated on the matter of discretion:

“The discretion is intended so as to be exercised to avoid injustice or hardship resulting from inadvertence or excusable mistake or error but is not designed to assist a person who has deliberately sought whether by evasion or otherwise to obstruct or delay the course of justice.”

8. One of the issues that usually confront the courts with respect to dismissal of suits for delays and the subsequent applications for reinstatement, is the need for expeditious conclusion of suits. In *Mobile Kitale Service Station vs. Mobil Oil Kenya Limited & another* [2004] eKLR (Warsame J) where it was held:

“I must say that the Courts are under a lot of pressure from backlogs and increased litigation, therefore it is in the interest of justice that litigation must be conducted expeditiously and efficiently so that injustice caused by delay would be a thing of the past. Justice would be better served if we dispose matters expeditiously. Therefore, I have no doubt the delay in the expeditious prosecution of this suit is due to the laxity, indifference and/ or negligence of the plaintiff. That negligence, indifference and/or laxity should not and cannot be placed at the doorsteps of the defendant. The consequences must be placed on their shoulders.”

9. I do find that the application lacks merit and is dismissed with costs.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 11TH DAY OF APRIL 2024.

A. O. OMBWAYO



JUDGE

