



Kamau v Diamond Property Merchants Limited (Environment & Land Case 326 of 2018) [2024] KEELC 6607 (KLR) (3 October 2024) (Ruling)

Neutral citation: [2024] KEELC 6607 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 326 OF 2018
LN MBUGUA, J
OCTOBER 3, 2024**

BETWEEN

GEORGE GABRIEL NJOROGE KAMAU PLAINTIFF

AND

DIAMOND PROPERTY MERCHANTS LIMITED DEFENDANT

RULING

1. Before me is the plaintiff's Notice of Motion application dated 22.4.2024 seeking orders for reinstatement of the suit which was dismissed on 23.6.2020. The application is premised on grounds set out on the face of the application and on the supporting affidavit of the applicant. He contends that after filing the suit, he waited in vain to be updated by his advocate, until early 2024 when he visited his advocates office to make inquiries. He was told that the advocate handling his matter had left the firm, of which a follow up with the advocates revealed that his case had been dismissed.
2. He avers that the mistakes of his advocates should not be visited upon him and that he is ready to prosecute the matter.
3. The defendant opposes the application vide the Replying Affidavit sworn on 31.5.2024 by its director, one Robert Mwarangu. He contends that the plaintiff abandoned this case which was eventually dismissed for want of prosecution on 23.6.2020. He further avers that the delay in filing the current application has been inordinate and was not explained.
4. I have considered all the arguments raised herein including the rival submissions. The issue falling for determination is whether this suit which was dismissed on 23.6.2020 should be reinstated.



5. In the case of *Mwangi S. Kimenyi v Attorney General and 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..”
6. The records of this file are rather unflattering. Nothing much happened from the time the suit was filed in July 2018 until 9.7.2019 when the plaintiff’s advocate was directed to serve their paginated trial bundle within 60 days failure to which the suit would stand as dismissed and the matter was given a mention date for 23.1.2020. There was no compliance with the court’s directions. Even worse, there was no further attendance by the plaintiff’s advocate and the case was eventually dismissed on 23.6.2020.
7. The plaintiff has not given a plausible account as to why it took him close to 6 years to find out what was happening to his case. After all, a matter once filed belongs to the litigant and not his advocate, See - *Mwangi Gachiengu & 2 others v Mwaura Gitbuku & another* [2019] eKLR.
8. The foregoing notwithstanding, I find that the applicant now appears vigilant and ready to prosecute the matter. It is noted that he has even engaged a new advocate to represent him in this case. In the circumstances, the court will adopt the broad equity approach to give the applicant another chance to sit at the seat of justice.
9. In the end, the application dated 22.4.2024 is allowed on the following terms;
1. The applicant shall pay throw away costs of sh.50 000 to the respondent before next court date.
 2. Once set down for hearing, the case shall not be adjourned at the instance of the plaintiff.

It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 3RD DAY OF OCTOBER, 2024 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:-

Njanjo for Defendant

Court assistant: Joan

