



Korir v Soin United Women Group (Sued through Eunice Towett, Jane Mwolomet, Lucio Chebocho); Kombich (Suing as the Legal Representative of the Estate of Alfred Kipkemoi Cheruiyot - Deceased) (Interested Party) (Environment & Land Case 104 of 2017) [2023] KEELC 16019 (KLR) (9 March 2023) (Ruling)

Neutral citation: [2023] KEELC 16019 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERICHO
ENVIRONMENT & LAND CASE 104 OF 2017**

MC OUNDO, J

MARCH 9, 2023

BETWEEN

FREDRICK KORIR PLAINTIFF

AND

SOIN UNITED WOMEN GROUP (SUED THROUGH EUNICE TOWETT, JANE MWOLOMET, LUCIO CHEBOCHO) RESPONDENT

AND

LIVINGSTONE CHERUIYOT KOMBICH (SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF ALFRED KIPKEMOI CHERUIYOT - DECEASED) INTERESTED PARTY

RULING

1. Before me for determination is the Notice of Motion dated the July 17, 2022 brought under the provisions of Order 51 Rule 1, Order 25 Rule 5 of the *Civil Procedure Rules*, Section 3, 3A and 63(e) of the *Civil Procedure Act*, Article 159 of the *Constitution* of Kenya 2010 and all enabling provisions of Law where the Applicant seeks that the firm of M/S Kadet & Company Advocates be granted leave to come on record for the Plaintiff in place of the firm of M/S Bett & Co Advocates.
2. The Applicant further seeks that the consent order dated October 22, 2021 made between the parties herein be set aside and for the costs of and incidentals to the application be provided for.
3. The said Application is based on the grounds therein and supported by an affidavit of Fredrick Korir dated the July 17, 2022.



4. The Application was opposed by the Interested party's undated Replying Affidavit, to the effect that it was an afterthought intended to delay and/or frustrate them from enjoying the fruits of the Court's order of October 19, 2021. That further, the application was to delay the contempt of court proceedings, the Plaintiff having gone ahead to frustrate and/or side step all efforts in ensuring that he complied with the said orders of court. That there would be no prejudice visited upon the Plaintiff should the application herein be dismissed.
5. On the October 26, 2022, directions were taken that the Application dated the July 17, 2022 be disposed of by way of written submissions. This was in the absence of Counsel for the Plaintiff who had sought to cease acting for the Plaintiff. The application had been allowed. On the February 20, 2023 when the matter came up for mention, the Plaintiff/Applicant had not complied with the direction of the court wherein in his presence the court had directed him to file his submissions within 7 days. There was still no compliance as at the time I write this ruling.

Determination.

6. It is now a settled practice under the new constitutional dispensation that filing of written submissions is the norm as written submissions serve the purpose of expedience and amounts to addressing the court on the evaluation of the evidence of each party and analysis of the law. It is therefore trite that an Applicant who fails to file his submissions on an application as ordered by the court is deemed as a party who has failed to prosecute his application and therefor that application is liable for dismissal. The filing of submissions having been ordered, and this court having extended time for compliance without compliance, the failure by the Applicant to exercise the leave granted to them to file written submissions clearly demonstrates inertia and inordinate delay, lack of interest and/or seriousness on the Applicant's part in the prosecution of the matter.
7. The Court of Appeal in *Rowlands Ndegwa and 4 Others v County Government of Nyeri and 3 Others; Agriculture, Fisheries and Food Authority & Another (Interested Parties) [2020] eKLR*, citing with approval the decision of the High Court in, *Winnie Wanjiku Mwai v Attorney General & 3 others [2016] eKLR*, observed as follows:

' With regard to dismissal for want of prosecution, there are indeed no hard and fast rules as to the manner in which the inherent power and discretion to dismiss an action for want of prosecution is to be exercised. It is however generally accepted that dismissal will be invited if there should be a delay in the prosecution of the action and the respondent is prejudiced by the delay with attention also being paid to the reasons for the inactivity.'
8. The mode of hearing of the Application having been received by the Plaintiff/Applicant herein and there having been no compliance, I am persuaded to dismiss the main motion, which I now do, with costs to the interested party at a lower scale.
9. A word of wisdom however in consideration of prayers sought in paragraph 3 of the application. This is a concluded matter and the Advocate seeking to come on record ought to have complied with the law before taking up the matter at the post-judgment stage.



Dated and delivered via Microsoft Teams at Kericho this 9th day of March 2023

M.C. OUNDO

ENVIRONMENT & LAND – JUDGE



