



**Rinya Hospital Limited v Cooperative Bank of Kenya Limited & another (Civil Suit 23 of 2008) [2023] KEELC 21178 (KLR) (1 November 2023) (Ruling)**

Neutral citation: [2023] KEELC 21178 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KISII  
CIVIL SUIT 23 OF 2008  
M SILA, J  
NOVEMBER 1, 2023**

**BETWEEN**

**RINYA HOSPITAL LIMITED ..... PLAINTIFF**

**AND**

**COOPERATIVE BANK OF KENYA LIMITED ..... 1<sup>ST</sup> DEFENDANT**

**SPORTLIGHT INTERCEPTS KENYA LIMITED ..... 2<sup>ND</sup> DEFENDANT**

*(Application for dismissal of suit for want of prosecution; application not opposed; Order 17 Rule 2; five years having lapsed since the last activity in court; application allowed and suit dismissed for want of prosecution)*

**RULING**

1. Before me is an application dated 5 April 2023 filed by the defendants seeking orders that this suit be dismissed for want of prosecution. Nothing has been filed to oppose the motion and I have given it due consideration.
2. I observe that the plaintiff/respondent commenced this suit through a plaint filed on 24 April 2008. That is already more than 12 years ago. In the plaint, the respondent averred that she was granted financial accommodation to the tune of Kshs. 2,700,000/= in the year 2007, and offered the land parcel South Sakwa/Wawere/647 as security; a charge was created in favour of the 1<sup>st</sup> applicant. In April 2008, the applicant instructed the 2<sup>nd</sup> defendant, a firm of auctioneers, to sell the property pursuant to its statutory power of sale. It is this action which prompted this suit, as the respondent claimed that the intended sale was illegal. Together with the plaint, the respondent filed an application to stop the sale of the suit land pending hearing and determination of the case. The application was heard, and granted, through a ruling delivered on 26 September 2008, basically because the court doubted the legality of the statutory notice.



3. On 31 August 2010, the respondent filed another application, complaining that despite the order of injunction, the defendants had yet again advertised the suit land for sale. This application was dismissed on the explanation that after the ruling of 26 September 2008 a fresh statutory notice was issued.
4. Nothing much appears to have happened thereafter, until 8 January 2014, when the defendants filed an application for dismissal of suit for want of prosecution. That application was withdrawn on 14 October 2014 after counsel for the respondent pleaded to be given a chance to prosecute the case. A hearing date for 21 July 2015 was given but the matter did not proceed as the judge was on transfer. From that date, the respondent took no steps to list the case for hearing. The court out of its own initiative listed the case for hearing during service week (a program for disposal of old cases) on 22 March 2017. On that day the matter was adjourned upon an application by counsel for the respondent. It was said that the director of the respondent had died. It is not clear what happened on that issue because the defendants urged that the plaintiff company had two directors. Whatever the case, the respondent took no steps to prosecute the matter, and on 5 May 2023, after this application had been served, counsel for the respondent applied to cease acting for the respondent, which application I allowed on 6 July 2023. I directed that the respondent be served directly, which was effected, but nothing was filed to oppose this motion.
5. From the record, the the last time the matter was in court, before the present application was filed, was on 15 January 2018. That is about five years to the filing of this application. Dismissals for want of prosecution are addressed under Order 17 Rule 2 which is drawn as follows :-
  2. Notice to show cause why suit should not be dismissed [Order 17, rule 2.]
    - (1) In any suit in which no application has been made or step taken by either party for one year, the court may give notice in writing to the parties to show cause why the suit should not be dismissed, and if cause is not shown to its satisfaction, may dismiss the suit.
    - (2) If cause is shown to the satisfaction of the court it may make such orders as it thinks fit to obtain expeditious hearing of the suit.
    - (3) Any party to the suit may apply for its dismissal as provided in sub-rule 1.
    - (4) The court may dismiss the suit for non-compliance with any direction given under this Order.
    - (5) A suit stands dismissed after two years where no step has been undertaken.
    - (6) A party may apply to court after dismissal of a suit under this Order.
6. From the above, it will be seen that a suit is liable for dismissal, by the court on its own motion, or a party can apply for its dismissal, if the case remains idle for more than one year. Under sub-rule (5) a suit stands dismissed after two years if no step is taken.
7. In this matter, more than five years have lapsed from the date the matter was last in court. The plaintiff clearly no longer has any interest in this case. If she still had any interest, she would certainly have taken some steps to proceed with the case. I have no reason to decline the prayers sought herein. I proceed to dismiss this suit for want of prosecution pursuant to Order 17 Rule 2(3) of the Civil Procedure



Rules, 2010. The costs of this dismissed suit will be to the defendants. For the avoidance of doubt any interlocutory orders are hereby vacated with the dismissal of the suit.

8. Orders accordingly.

**DATED AND DELIVERED AT KISII THIS 1<sup>ST</sup> DAY OF NOVEMBER 2023**

**JUSTICE MUNYAO SILA**

**JUDGE, ENVIRONMENT AND LAND COURT**

**AT KISII**

In presence of:-

Mr. Bosire instructed by M/S Moronge & Company Advocates for the defendants/applicants

No appearance on part of the plaintiff/respondent

Mr. Lawrence Chomba – Court Assistant

