



**In re Estate of Christopher Kibor Kimaiyo (Deceased) (Cause
16 of 2019) [2025] KEHC 1559 (KLR) (14 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1559 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CAUSE 16 OF 2019
RN NYAKUNDI, J
FEBRUARY 14, 2025**

IN THE MATTER OF THE ESTATE OF CHRISTOPHER KIBOR KIMAIYO (DECEASED)

AND

**IN THE MATTER OF AN APPLICATION BY JENIFFER JEMUTAI MAIYO OF
PETITION FOR LETTERS OF ADMINISTRATION AD COLLIGENDA BONA**

IN THE MATTER OF

JENIFFER JEMUTAI MAIYO APPLICANT

RULING

1. On 22nd February 2019, the Applicant herein filed an application premised under section 54 and 67 of the *Law of Succession Act* and Rule 36 of the *Probate and Administration Rules* under Part VII, petitioning this Honourable Court for a grant of letters of Administration Ad Colligenda Bona of the Estate of Christopher Kibor Maiyo who died domiciled in Elgeyo Marakwet County within the Republic of Kenya on the 16th day of January 2012 limited for purposes only of collecting and getting and receiving the estate and doing such acts as maybe necessary for the preservation of the same until further representation be granted.
2. Further the Applicant stated as follows:
 - a. I present this petition in my capacity as the widow of the deceased and by reason of the fact that owing to the special circumstances of the case the urgency of the matter as appears from the affidavit filed herewith is so great that it would not be possible for the court to make a full grant to the person who is by law entitled thereto in sufficient time to meet the necessities of the estate of the deceased.
 - b. That I will collect and preserve the estate according to the law and order of the Honourable Court all that estate of the deceased which by law devolves to and vests in his personal



representation for the use and benefit as by law directed and I will render a just and time account thereto wherever required to do so.

- c. I will when required by the court to do so deliver the grant in sufficient to meet the necessities of the said estate of the deceased.
 - d. That I will have no power to distribute the estate under the grant.
3. A clear look at the record indicates that this matter last came before Hon. Justice H.A.Omondi J on 25th February 2019. However, since that date, the court record reveals a conspicuous absence of any steps taken by the Applicant to advance the prosecution of the application.

Decision

4. Order 17 Rule 2(1) of the [Civil Procedure Rules](#), which governs dismissal of suits for want of prosecution, provides as follows:

“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.”

5. Additionally, the Provisions of Order 17 Rule 2 (3) of the [Civil Procedure Rules](#) provides, *inter alia*: -

“(3). any party to the suit may apply for its dismissal as provided in Sub-rule 1”.

6. In order for these legal principles to be applicable the following need to be demonstrated: -

- (a) That no application has been made or step taken by either party for one (1) year from the time of filing the suit and
- (b) That the Respondents have failed to comply with the directions of the court clearly.

7. The Legal substratum for dismissal of suits for want of prosecution is founded on the Principles that litigation must be expedited, and concluded by parties who come to court for seeking justice. To assist in clearing backlogs in court and the ever increasing over-loads restoring bad public confidence and trust on the judiciary. Upon filing of cases parties should efficiently and effectively be seen to fast track their hearing and determination. There should be no delay at all based on legal maxim – Justice delayed is justice denied” Nonetheless, should there be any delay arising from one substantive and justifiable logistical cause or reason, the same should not be inordinate, unreasonable and inexcusable. I say so, as that would be doing grave injustice to one side or the other or both and in such circumstance, the Honorable May in its discretion dismiss the action straight away.

8. This court on the legal ration of Order 17 (2)(3) of the [Civil Procedure Rules](#), 2010 relies on the decision of “[Investment Limited v G4s Security Services Limited](#) (2015) eKLR where court held:

“This order is permissive and allows quite significant room for exercise of discretion to sustain the suit. And I think it is so especially when one fathoms the requirements of Article 159 of the [Constitution of Kenya](#) and the overriding objective when demands of courts to strive often, unless for very good cause, to serve substantive justice. This is well understood in the legal reality that dismissal of a suit without hearing it on merit is such draconian act comparable only to the proverbial “Sword of the Damocles”. But in reality should be checked against yet another equally important constitutional demand that case should be disposed of expeditiously, which is founded upon the old adage and now an express



Constitutional Principle of Justice under Article 159 (2) of the *Constitution of Kenya* that justice delayed is justice denied. Here I am reminded that justice is to all the parties not only to the Plaintiff."

9. Clearly, the powers granted to court hereby by law are discretionally and have to be exercised judicially, fairly and capriciously.
10. In so doing, the test applied by court in the application for dismissal of suits for want of prosecution is whether the delay is prolonged and inexcusable and if it is, whether justice can be done despite the delay. In other words, if the delay is satisfied with the Plaintiff's excuse for the delay and the parties are still keen and interested in pursuing their matter going forward in the fullness of time, justice can still be done to the parties before court, and hence the action would not be to dismiss it but direct that it be heard at the earliest time possible and available.
11. A clear glimpse at the record indicates that this matter last came before Hon. Justice H.A.Omondi J on 25th February 2019. However, since that date, the court record reveals a conspicuous absence of any steps taken by the Applicant to advance the prosecution of the application.
12. Having carefully considered the circumstances of this case, I am satisfied that this is a proper case for the exercise of this court's discretion to dismiss the petition for want of prosecution. This is because the full one-year period contemplated under Order 17 Rule 2(1) has elapsed since the matter was last in court on 25th February 19 which is almost six (6) years now.
13. Consequently, this suit is dismissed for want of prosecution.
14. It is so ordered.

DELIVERED, DATED AND SIGNED AT ELDORET ON THIS 14TH FEBRUARY 2025.

R. NYAKUNDI

JUDGE

