In re GKB, CKB & SKB (Children) (Adoption Cause 1 of 2022) [2025] KEHC 1360 (KLR) (14 February 2025) (Ruling)

Neutral citation: [2025] KEHC 1360 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT ELDORET

ADOPTION CAUSE 1 OF 2022

RN NYAKUNDI, J

FEBRUARY 14, 2025

IN THE MATTER OF SECTIONS 4, 82(1) (2) (B) (C) (D), 83(1), 102, 113, 114, 154, 156(1), 157(1), 158, 159(1) OF THE CHILDREN ACT 2001

AND

IN THE MATTER OF ARTICLE 53(2) OF THE CONSTITUTION OF KENYA 2010

AND

IN THE MATTER OF ADOPTION OF GKB

AND

IN THE MATTER OF ADOPTION OF CK

AND

IN THE MATTER OF ADOPTION OF SKB

IN THE MATTER OF

JC .... APPLICANT

RULING

Representation:

M/s Chanzu Victor & Co. Advocates

1. The Applicant herein JC filed Originating Summons Application dated 24th January 2022 seeking the following orders:

   a. That pending the hearing and determination of the originating summons, JC be appointed as Guardian Ad Litem for GKB, CKB & SKB, the children

   b. That the Applicant JC be authorized to adopt GKB, CKB & SKB

c. That the Registrar General be ordered to make appropriate entries in the Adopted Children Register accordingly to reflect GKB, CKB & SKB legal identity.

d. That a formal Adoption Order as required by the Children's Act, 2001, Cap 141 Laws of Kenya do issue in favour of the Applicant.

e. That this Honourable Court do issue any such further Orders/directions as it may be deem fit and expedient in the interest of the child.

2. The record indicates that upon filing of the application there is a conspicuous absence of any steps taken by the Applicant to advance the prosecution of the application.

Decision

3. The legal framework governing dismissal of proceedings for want of prosecution is well established. Order 17 Rule 2(1) of the Civil Procedure Rules provides that in any suit where no application has been made or step taken by either party for one year, the court may dismiss such suit. This provision embodies the fundamental principle that litigation must be conducted with reasonable diligence and expedition.

4. The court in Bremer Vulkan Schiffbau & Maschinenfabrik v South India Shipping Corporation Ltd (1981) 2 WLR 141 addressed the issue by accepting that the court has inherent jurisdiction in our case expressly stated in Section 3 and 3A of the *Civil Procedure Act* to protect itself from abuse of its processes by litigants who filed actions with no intention to prosecute them. Thus:

> "The high court's power to dismiss a pending action for want of prosecution is but an instance of a general power to control its own procedure so as to prevent its being used to achieve injustice. Such a power is inherent in its constitutional function as a court of justice. Every civilised system of government requires that the state should make available all its citizens a means for the just and peaceful settlement of disputes between them as to their respective legal rights. The means provided are courts of justice to which every citizen has a constitutional right of access in the role of Plaintiff to obtain the remedy to which he claims to be entitled in consequence of an alleged breach of his legal or equitable rights by some other citizen, the defendant. Whether or not to avail himself of this right of access to the court lies exclusively within the Plaintiff's choice; if he chooses to do so, the defendant has no option in the matter; his subjection to the jurisdiction of the court is compulsory. So, it would stultify the constitutional role of the High Court as a court of justice if it were not armed with power to prevent it process being misused in such a way as to diminish its capability of arriving at a just decision of the dispute.
>
> The power to dismiss a pending action for want of prosecution in cases where to allow the action to continue would involve a substantial risk that justice could not be done is thus properly described as an "inherent power" the exercise of which is in the "inherent jurisdiction" of the High Court. It would I thin be conducive to legal clarity if it (sic) use of these two expressions were confined to the doing by the court of acts which it needs must have the power to in order to maintain its character as a court of justice."

5. In addition, in Birkett V James (1977) 2 ALL ER 801, the court put it this way:

> "To commence and to continue litigation which you have no intention to bring to conclusion can amount to an abuse of process. Where this is the situation the party against whom the

proceedings is brought is entitled to apply to have the action struck out and if justice so required (which will frequently be the case) the courts will dismiss the action. The evidence which was relied on to establish the abuse of process may be the Plaintiff's inactivity. The same evidence will then no doubt be capable of supporting an application to dismiss for want of prosecution. However, if there is an abuse of process, it is not strictly necessary to establish want of prosecution under either of the limbs identified by Lord Diplock in Birkett v James. In this case once the conclusion was reached that the reason for the delay were (Sic) one which involve abusing the process of the court in maintaining proceedings when there was no intention of carrying the case to trial the court were (sic) entitled to dismiss the proceedings."

6. The jurisprudential principles governing dismissal for want of prosecution were comprehensively articulated in the case of Ivita -vs- Kyumbu (1984) KLR 441, where the Court established that the test is whether the delay is prolonged and inexcusable, and if it is, whether justice can be done despite such delay. This principle recognizes that justice must be administered not only to the petitioner but also to the respondents, who have a legitimate expectation that matters brought against them will be prosecuted diligently.

7. As elucidated in Mwangi S. Kimenyi -vs- Attorney General and Another, Civil Suit Misc. No. 720 of 2009, the court must consider whether the delay has been intentional and contumelious, whether it amounts to an abuse of the court process, whether it is inordinate and inexcusable, and whether it gives rise to a substantial risk to fair trial or causes serious prejudice to the Respondents.

8. 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

9. The suit was last in court on 24th March 2023 and therefore has been inactive for a period of 1 year 11 months as at 10th February 2025 when the application herein was filed. The matter is therefore ripe for dismissal

10. From the foregoing, this suit is dismissed for want of prosecution.

11. It is so ordered.

DELIVERED VIA CTS DATED AND SIGNED AT ELDORET ON THIS 14TH FEBRUARY 2025

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R. NYAKUNDI

JUDGE