



**Zeevi v Esmail; Isabirye (Interested Party) (Civil Suit E488 of 2022)
[2025] KEHC 1927 (KLR) (Commercial and Tax) (18 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1927 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL SUIT E488 OF 2022
F GIKONYO, J
FEBRUARY 18, 2025**

BETWEEN

GAD ZEEVI APPLICANT

AND

ABKER ABDULLAH KASSAM ESMAIL RESPONDENT

AND

JAMES ABIAM MUGOYA ISABIRYE INTERESTED PARTY

RULING

1. Yet again, the 18th day of February, 2025 when this matter came up for hearing at 200pm, Mr. Bwire, the legal counsel for the plaintiff applied for adjournment of the hearing on the basis that;
 - a) the plaintiff is absent due to inability to travel; and
 - b) the medical assistant who was to accompany him as advised by the doctor could not obtain a visa to travel to Kenya. He stated that, a visa is required for the medical personnel to travel. The latter issue was, however, introduced when Mr. Bwire stood in reply. The legal counsel first sought to suggest that the issue of visa for the accompanying medical personnel was subsumed in the submission on medical report he had made in his initial submission. But, the court cautioned him that he did not submit on the issue as he claims. Counsel obliged and submitted on it as a further issue in support of his client's application.
2. Counsel for the plaintiff stated that the non-attendance of the plaintiff in court was not out of contempt but due to the impediments on the visa which he asked the court to take judicial notice of. He also urged the court to give the plaintiff a last chance to present his case in court in honour of article 50 of *the Constitution* on fair trial'



3. Mr. Kiragu Kimani SC, Ochieng Oduol, Amoko and Ismail opposed the application for adjournment.
4. The gist of their submissions is that the plaintiff is bent at scuttling his cross-examination and so he is not covered by article 50 of *the Constitution*. They were categorical that being legal counsel, and therefore, an officer of the court, does not give Mr. Bwire the right to adduce evidence from the bar. Issues to do with visa should be argued on evidence properly laid before the court through an affidavit. They stated that a serious party would have provided a copy of passport and visa for the plaintiff, to show he had made arrangement to travel, and application for visa for the medical personnel who was to accompany him in travel. None of these was placed before the court. They beseeched the court to act in accordance Order 12 rule 3(1) of the Civil Procedure rules and dismiss the suit as no sufficient cause has been given for non-attendance.

Analysis and determination

5. This court ordered yesterday that: -

The plaintiff should attend the court as had been ordered-physical hearing- except in accordance with the doctor's opinion. The plaintiff also gets the benefit that this matter was scheduled for hearing today and tomorrow. Accordingly, today's hearing of the suit is hereby adjourned. The matter shall be heard tomorrow the 18th day of February, 2025 at 2.00pm.
6. The defendants and proposed parties are in attendance; the plaintiff is absent
7. Order 12 rule 3(2) of the CPR provides that: -
 1. If on the day fixed for hearing, after the suit has been called on for hearing outside the court, only the defendant attends and he admits no part of the claim, the suit shall be dismissed except for good cause to be recorded by the court.
8. The plaintiff merely claims without any evidence that the medical assistant to accompany him did not have a visa to come to Kenya. The court was not told that arrangements had been made for such travel. The name of the person to accompany him or an application for visa for the person were not provided by the plaintiff to support his claims. There was no evidence also to show that the plaintiff had made arrangement to travel were it not for the visa hitch for his medical companion. His passport was not produced and neither was any visa for his travel if he needed any. The submissions by the legal counsel on such evidentiary material is most inappropriate let alone being terribly insufficient.
9. The plaintiff has failed to attend court in three previous occasions for the hearing of his case. He has also not attended court today. In these occasions his absence was not underpinned by any or any sufficient cause. Therefore, the court agrees with the legal counsel for the respondents that the plaintiff may not avail himself the benefit and protection of article 50 of *the Constitution* on fair trial when it is him who is prejudicing fair trial in the case. The court stated yesterday and will state it again, that justice is to all parties; and not to some or one of the parties.
10. The case has been called out for hearing today and only the defendants and proposed interested parties have attended court; the plaintiff is absent. No sufficient cause has been shown for his non-attendance. In the oath of office and under *the Constitution*, a court must, among other commitments, administer justice without fear whilst ensuring that a party does not cause prejudice to other parties or fair trial. With much trepidation, the court is inclined at dismissing and hereby dismisses the suit with costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 18TH DAY OF FEBRUARY, 2025



F. GIKONYO M

JUDGE

In the presence of: -

2. Mukuha and Bwire for the plaintiff
3. Ochieng Oduol for defendant
4. N/A for Wamithi for Interested party
5. Kimani Kiragu for proposed interested party
6. Ismail for proposed interested party

