



**Moi Teaching & Referral Hospital v Alexander Forbes Healthcare Limited  
(Civil Suit 13 of 2016) [2025] KEHC 4117 (KLR) (2 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 4117 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
CIVIL SUIT 13 OF 2016  
RN NYAKUNDI, J  
APRIL 2, 2025**

**BETWEEN**

**MOI TEACHING & REFFERAL HOSPITAL ..... PLAINTIFF**

**AND**

**ALEXANDER FORBES HEALTHCARE LIMITED ..... DEFENDANT**

**RULING**

1. From the record the Plaintiff filed his claim on 31<sup>st</sup> August, 2016 seeking the following reliefs:
  - a. An order of specific performance compelling the defendant to perform its contractual obligation under the said contract by regularizing the overdue account of Kshs. 20,176,662/=
  - b. Costs of the suit
  - c. Interest.
2. Unfortunately, nine (9) years down the line since the claim was filed, no positive steps have been taken to prosecute the claim against the defendant. The record is very clear that the Plaintiff has been indolent to adduce evidence in support of the claim and most of the adjournments are inexcusable. As a consequence of it, the exercise of the court's power to dismiss this cause of action for want of prosecution in line with the principles outlined in *Birket v James* (1977) 2 ALL E.R. 801 is imminent unless the Plaintiff takes advantage of the last adjournment granted for the hearing scheduled on the 4<sup>th</sup> April, 2025. In the cited case above, Lord Diplock observed:

“That where the court is satisfied that the default to prosecute the case has been intentional and contumelious e.g. disobedience to a peremptory order of the court or conduct amounting to abuse of the process of the court or that there has been inordinate and inexcusable delay on the part of the Plaintiff or its lawyers and that such delay will give rise to a substantial risk that it is not possible to have a fair trial of the issues in action or is such



as is likely to cause or to have caused serious prejudice to the defendant either as between themselves and the Plaintiff or between each other or between them and a third party.”

3. The Plaintiffs in this case have not given any explanation why the suit should be pending for such an extensive period of time. Therefore, I find that there is inordinate inexcusable delay since the proceedings were initiated against the defendant. I therefore put the Plaintiff on notice that failure to prosecute the suit on 4<sup>th</sup> April, 2025, there will be no further adjournment on the same reasons so advanced previously for not taking steps to present evidence before this court. This opportunity to present their case on 4<sup>th</sup> April, 2025 be and is hereby been marked as the last adjournment with no orders as to costs.

Given under my hand and seal of this Honorable court on this 1<sup>st</sup> day of April, 2025

**DATED AND DELIVERED VIA CTS AT ELDORET, THIS 2<sup>ND</sup> DAY OF APRIL 2025**

.....

**R. NYAKUNDI**

**JUDGE**

