



REPUBLIC OF KENYA



Kobo 360 Limited v Exon Investments Limited & another (Commercial Case E013 of 2023) [2025] KEHC 12106 (KLR) (8 May 2025) (Ruling)

Neutral citation: [2025] KEHC 12106 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
COMMERCIAL CASE E013 OF 2023**

F WANGARI, J

MAY 8, 2025

BETWEEN

KOBO 360 LIMITED PLAINTIFF

AND

EXON INVESTMENTS LIMITED 1ST DEFENDANT

SAAFIGO CLAYS LIMITED 2ND DEFENDANT

RULING

1. The Plaintiff filed the Notice of Motion dated 5/6/2024 seeking to set aside the Court Order dated 9/5/2024 dismissing the suit for want of prosecution. The Applicant states that the Plaintiffs were unaware that the matter was coming up for hearing on 9/5/2024.
2. The matter had previously been fixed for hearing on 10/4/2024, which was declared a Public Holiday.
3. The Counsel who had the conduct of the matter left the firm of advocates without following up on the new dates from the registry. It was stated that the Plaintiff was keen in prosecuting the matter and prayed that the suit be reinstated.
4. The Defendants objected to the application by filing the Replying Affidavit dated 2/7/2024. It was deponed that the Counsel for the Defendants wrote to the Counsel for the Plaintiff, by way of email and they agreed to have the matter fixed for hearing on 9/5/2024. The e-filing platform was updated reflecting the new hearing date. When the matter came up for hearing, the Plaintiff did not attend court and the suit was dismissed for want of prosecution and non-attendance. They prayed that the application be dismissed with costs.
5. The court directed that the application be canvassed by way of written submissions. Both parties complied. Without giving much attention to the written submissions, I have perused through the court proceedings.



6. The issue for determination is whether the application has merits. Upon perusing the proceedings. On 12/2/2024, the trial Judge Hon. Magare Kizito fixed the suit for hearing on 10/04/2024. On 10/04/2024, only the Coram was reached but here are no proceedings. That aligns with the submissions that 10/4/2024 was a Public Holiday.
7. The file was placed before the Honourable Judge on 11/4/2024. There was no appearance by the parties. The court fixed the matter for directions on 9/5/2024. On 9/5/2024, there was no appearance by the parties. The Judge dismissed the matter for want of prosecution. From the court proceedings, the following facts came to life;
 - a. That there were no proceedings that took place on 10/4/2024 as the court was not sitting due to the Public Holiday.
 - b. That there is no notice on record that was issued to the parties that the matter was coming up on 11/4/2024.
 - c. Further, there is no notice on record to show that the matter was coming up for directions on 9/5/2024.
 - d. That on 9/5/2024, the matter was coming up for directions and not hearing.
8. From the above, I do concur with the Plaintiff that they were not aware that the matter was coming up on 9/5/2024.
9. Even though the Counsel for the Defendants stated that he had communicated to the Counsel for the Plaintiff on the new date by way of email, the email was not attached to the Supporting Affidavit by the Defendants. Further, if in deed the Counsel was aware that the matter was coming up on 9/5/2024, it is not explained why the Defendants were not present in Court on 9/5/2024. One can only come into one conclusion, ie. That the Defendants were also not aware that the matter was coming up on the said date.
10. Secondly, the suit was dismissed for want for prosecution. The law on dismissal of suits is provided for under Order 17, Rule 2. From the proceedings, it cannot be said that no action had been taken for over 1 year as the Plaintiff was in court on 12/2/2024 for Case Management Conference. The suit was therefore not ripe for dismissal for want of prosecution. I therefore find the application dated 5/6/2024 has merits. I find no reason to condemn the Defendants to meet the cost of the application as they had nothing to do with the dismissal of the suit.
11. Each party is to bear its own costs.

F. WANGARI –JUDGE

8/5/2025

Court;

Ruling signed and delivered in the presence for Karina Advocate for Defendant, No appearance by Plaintiff and Norah Court Assistant this 8/5/2025.

Mention on 18/6/25 for Case Management Conference. Notice to Plaintiff.

