



**Wandera v Modern Coast Express (Civil Suit 020 of 2020)  
[2025] KEHC 12091 (KLR) (22 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 12091 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
CIVIL SUIT 020 OF 2020  
F WANGARI, J  
MAY 22, 2025**

**BETWEEN**

**DEOGRATIAS WANDERA ..... PLAINTIFF**

**AND**

**MODERN COAST EXPRESS ..... DEFENDANT**

**RULING**

1. This suit was instituted via a Complaint dated 30/06/2020 seeking for judgment against the Defendant for General and Special Damages as a result of injuries sustained in an accident caused by the negligence of the Defendant.
2. The 1<sup>st</sup> Defendant filed its Statement of Defence dated 11/01/2021. The 2<sup>nd</sup> and 3<sup>rd</sup> Defendant failed to enter appearance and file their Defence. From the records, interlocutory judgement was entered for all the Defendants, but it ought to have been in respect to the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants only.
3. The matter was last in court on 22/09/2022. No action by the Plaintiff has been taken ever since. The court on its own motion issued a Notice to Show cause why the suit should not be dismissed for want of Prosecution, which notice was issued under the provisions of Order 17 Rule 2 of the [Civil Procedure Rules](#).
4. The Plaintiff and the 1<sup>st</sup> Defendant were both present in court when the Plaintiff was directed to file an affidavit together with written submissions to show cause why the suit should not be dismissed for want of prosecution. As at the time of writing this ruling, having confirmed from the physical court file and the e-filing platform, no document had been filed by the Plaintiff.



## Analysis

5. The single issue for my determination is whether the suit herein should be dismissed for want of prosecution. Order 17 Rule 2(1) of the [Civil Procedure Rules](#) provides, inter alia: -
  - 1). “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.
6. The test on dismissal of suits for want of prosecution was laid in [Mwangi S. Kimenyi -vs- Attorney General and Another](#) [2014] eKLR, when the court restated the test as follows: -
  1. When the delay is prolonged and inexcusable, such that it would cause grave injustice to the one side or the other or to both, the court may in its discretion dismiss the action straight away. However, it should be understood that prolonged delay alone should not prevent the court from doing justice to all the parties- the plaintiff, the defendant and any other third or interested party in the suit; lest justice should be placed too far away from the parties.
  2. Invariably, what should matter to the court is to serve substantive justice through judicious exercise of discretion which is to be guided by the following issues; 1) whether the delay has been intentional and contumelious; 2) whether the delay or the conduct of the Plaintiff amounts to an abuse of the court; 3) whether the delay is inordinate and inexcusable; 4) whether the delay is one that gives rise to a substantial risk to fair trial in that it is not possible to have a fair trial of issues in action or causes or likely to cause serious prejudice to the Defendant; and 5) what prejudice will the dismissal cause to the Plaintiff. By this test, the court is not assisting the indolent, but rather it is serving the interest of justice, substantive justice on behalf of all the parties.”
8. The matter was last in court on 22/09/2022. Only the Plaintiff was present. The matter was fixed for directions before the Deputy Registrar on 09/11/2022. However, no proceedings were recorded for the said date. Subsequently, this matter was mentioned on 17/11/2022, 22/02/2022, 10/08/2023/ 01/11/2023, 16/01/2024, 25/03/2024/ 04/06/2024/ 17/06/2024 and 24/07/2024 and in all those days, no party appeared in court.
9. On 22/10/2024, the 1<sup>st</sup> Defendant was present when the court fixed the matter for hearing of the notice to show cause why the suit should not be dismissed for want of prosecution. On 02/12/2024 when the matter came up for hearing of the notice to show cause, the Plaintiff was directed to file the affidavit and written submissions as stated herein above.
10. The Plaintiff having failed to file the affidavit as directed has failed to show cause why the suit should not be dismissed. Under the circumstances, the suit is hereby dismissed for want of prosecution.
11. On costs, the 1<sup>st</sup> Defendant having filed a Statement of Defence but having taken action until the NTSC was issued, I direct that each party should bear its own costs.

## Determination

9. Following the foregoing discourse, the upshot is that the following orders do hereby issue: -
  - a. The suit is hereby dismissed for want of prosecution.
  - b. Each party to bear its own costs.

Orders accordingly.



**DATED, SIGNED AND DELIVERED AT MOMBASA THIS 22<sup>ND</sup> DAY OF MAY, 2025.**

.....

**F. WANGARI**

**JUDGE**

In the presence of;

Mr. Obara h/b for Mr. Asige Advocate for the Plaintiff

M/S Kemunto Advocate for the Defendant

M/S Norah, Court Assistant

