



Mutiria & another (Suing as administrator and Personal Representative of Estate of Charity Mugure Mutiria & Grace Njeri Muitiria) v Kirii & another (Civil Suit 3 of 2013) [2025] KEHC 11059 (KLR) (24 July 2025) (Ruling)

Neutral citation: [2025] KEHC 11059 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MURANG'A
CIVIL SUIT 3 OF 2013
TW OUYA, J
JULY 24, 2025**

BETWEEN

**ANTONY KENNETH MUTIRIA & ANOTHER & ANOTHER &
ANOTHER PLAINTIFF**

**SUING AS ADMINISTRATOR AND PERSONAL REPRESENTATIVE OF
ESTATE OF CHARITY MUGURE MUTIRIA & GRACE NJERI MUITIRIA)**

AND

JAMES KIRII 1ST DEFENDANT

KIRIANI MISSION HOSPITAL 2ND DEFENDANT

*(Suing as Administrator and Personal representative of the
estate of Charity Mugure Mutiria & Grace Njeri Muitiria)*

RULING

1. The application before court is brought by the applicant under Article 50(1) of the Constitution of Kenya 2010, Order 51 Rule 1 of the Civil Procedure Rules 2010, Section 1A,1B & 3A of the Civil Procedure Act, Chapter 21 Laws of Kenya, inherent powers of the court and all enabling provisions of the law vide Notice of motion application dated 24th July 2024 seeking to dismiss an application by the Defendants herein dated 26th April 2021 for want of Prosecution.
2. The application sought to be dismissed was brought to court pursuant to high court judgement delivered on 13th April, 2021 by Kimondo, J in a civil suit which was determined after a full trial process. The impugned application filed on 19th May 2021 sought inter alia to set aside the High Court decision and to enlarge time within which the applicant would file their statement of Defence in the matter.



3. On the same date of filing the application Karugu Mbugua & Company Advocates entered Notice of Change of Advocates and came on record on behalf of the 1st Defendant/ Applicant.
4. The parties appeared before court on 20th May 2021 whereby the court declined to certify the matter urgent but directed that service of the application be effected on the decree holder and application heard inter parties before the Deputy Registrar.
5. From the record , the matter has been mentioned severally before the Deputy Registrar with non-attendance of the 1st Defendant/Applicant.
6. Subsequently, no action has since been taken to prosecute or finalize the said application to date.
7. The Applicant herein filed the present application together with hearing notice and there is evidence of service vide affidavit of service sworn on 12th May 2025 and filed on 23rd July 2025.
8. Counsel for the Applicant in the instant application appeared before court on 23rd July 2024 and made oral submissions while counsel for the respondent /1ST Defendant did not appear. Ruling was deferred to 25th July 2025 for the court to ascertain filing of affidavit of service by Counsel for the Applicant. The same has since been ascertained.
9. Having considered the application before the Court in its entirety, together with the oral submissions by counsel, this court is inclined to order that:

The application dated 26th March 2021 by the 1st Defendant /Respondent is hereby dismissed for want of prosecution. Costs of the applications dated 26th March 2021 and that of the instant application to be borne by the 1st Defendant/Respondent.

DATED, SIGNED AND DELIVERED ELECTRONICALLY THIS 24TH JULY, 2025.

HON. T. W. OUYA

JUDGE

