



**Nduma (Suing as a Friend and Guardian of Stephen Thiong'o Muhia)  
v Kenya Commercial Bank Limited & another (Civil Suit 220 of 2013)  
[2025] KEHC 11013 (KLR) (Commercial and Tax) (24 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 11013 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
CIVIL SUIT 220 OF 2013  
PM MULWA, J  
JULY 24, 2025**

**BETWEEN**

**NAOMI NJOKI NDUMA ..... PLAINTIFF  
SUING AS A FRIEND AND GUARDIAN OF STEPHEN THIONG'O MUHIA**

**AND**

**KENYA COMMERCIAL BANK LIMITED ..... 1<sup>ST</sup> DEFENDANT  
DANIEL BOYO NJUGUNA ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. Before this Court for determination is the Notice of Motion dated 16<sup>th</sup> August 2023 brought by the firm of Mburu Machua & Co. Advocates. The application seeks leave for the said firm to come on record for the Plaintiff/Applicant after the dismissal of the suit and further prays for orders to set aside, vary, or review the orders issued on 11<sup>th</sup> October 2018, which struck out and dismissed the Plaintiff's suit. The Applicant also seeks reinstatement of the suit for hearing on its merits.
2. The application is opposed. The 1<sup>st</sup> Defendant/Respondent filed Grounds of Opposition dated 8<sup>th</sup> December 2023 and a Replying Affidavit sworn on 8<sup>th</sup> March 2025 by Lilian Sogo, the Head of Legal - Litigation, on behalf of the 1<sup>st</sup> Defendant. She avers that the suit was filed in 2013 and that the Plaintiff failed to take any steps to prosecute the matter for over three years, resulting in its dismissal for want of prosecution. It is contended that the delay in filing the instant application is inordinate and unexplained, and that no plausible basis has been laid to warrant the setting aside of the dismissal orders. It is further submitted that the Plaintiff, as dominus litis, bears the ultimate responsibility to prosecute the case and cannot shift the blame to her previous advocates.



3. The application was canvassed by way of written submissions. The Plaintiff's submissions are dated 5<sup>th</sup> March 2024, while those of the 1<sup>st</sup> Defendant's are dated 6<sup>th</sup> March 2025.

### **Analysis and determination**

4. I have carefully considered the application, the response thereto, and the parties' respective submissions. The sole issue for determination is whether the Applicant has demonstrated sufficient cause to warrant the setting aside of the dismissal order issued on 11<sup>th</sup> October 2018 and the consequent reinstatement of the suit.

5. Order 12 Rule 7 of the *Civil Procedure Rules*, provides as follows:

“Where under this Order judgment has been entered or the suit has been dismissed, the court, on application, may set aside or vary the judgment or order upon such terms as may be just.”

6. The record shows that the suit was dismissed on 11<sup>th</sup> October 2018 for want of prosecution after the matter came up for hearing of the Notice to Show Cause. It is not in dispute that neither the Plaintiff nor her advocate attended court on that date. The only explanation offered is an oversight of the then advocate..

7. The power to reinstate a dismissed suit is discretionary. This discretion must, however, be exercised judiciously and following established legal principles. In *Thathini Development Company Limited v Mombasa Water & Sewerage Company & Another* [2022] KEELC 689 (KLR), the court observed:

“A suit is dismissed for want of prosecution when the parties therein fail to aid the court in meeting its overriding objective. The party seeking to reverse this order must explain sufficiently to court as to why his application is merited and persuade the court to exercise its discretion.”

8. Similarly, in *Richard Ncharpi Leiyagu v Independent Electoral and Boundaries Commission & 2 others* [2013] eKLR, the Court of Appeal stated:

“... the court's discretion to set aside an ex parte judgment or order is intended to avoid injustice or hardship resulting from accident, inadvertence or excusable mistake or error but not to assist a person who deliberately seeks to obstruct or delay the course of justice.”

9. In the present matter, the suit was filed in 2013 and dismissed in 2018. The instant application was not filed until 16<sup>th</sup> August 2023, nearly five years after the dismissal. Such delay is undeniably inordinate. No credible or sufficient explanation has been offered for this lapse. The explanation that the advocate failed to attend court due to oversight is neither supported by any affidavit from the said former advocate nor accompanied by any evidence of steps taken in the intervening years to rectify the omission.

10. The Applicant has urged the court to consider that mistakes of counsel should not be visited upon the client. While this is a principle acknowledged by courts, it is not absolute. A litigant is equally expected to be vigilant and to take reasonable steps to follow up on the progress of their case. As was held in *Habo Agencies Limited v Wilfred Odhiambo Musingo* [2015] KECA 987(KLR)

“It is not enough for a litigant to simply blame the advocate. A litigant also has a duty to follow up on his case.”



11. In any event, Section 3A of the *Civil Procedure Act* preserves the inherent powers of the court to make such orders as may be necessary to meet the ends of justice or prevent abuse of the court process. This provision, however, does not offer refuge to litigants who have slept on their rights for years and have failed to place before the court a justifiable reason for their indolence.
12. It is my considered view that reinstating a matter that has remained dormant for five years without sufficient cause being shown would be prejudicial to the opposing party and contrary to the overriding objective of the *Civil Procedure Act* as embodied in Sections 1A and 1B.

### **Disposition**

13. In the result, I find that the application dated 16<sup>th</sup> August 2023 lacks merit and is dismissed with costs to the 1<sup>st</sup> Defendant. Bottom of Form

It is so ordered.

**RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 24<sup>TH</sup> DAY OF JULY 2025.**

**PETER M. MULWA**

**JUDGE**

In the presence of:

N/A for Plaintiff/Applicant

Mr. Mahinda for 1<sup>st</sup> Defendant/Respondent

Court Assistant: Carlos

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