



Mbuvi t/a Katunga Mbuvi & Co Advocates v Mutambi (Miscellaneous Application E100 of 2021) [2024] KEHC 75 (KLR) (Commercial & Admiralty) (17 January 2024) (Ruling)

Neutral citation: [2024] KEHC 75 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND ADMIRALTY
MISCELLANEOUS APPLICATION E100 OF 2021**

**A MABEYA, J
JANUARY 17, 2024**

BETWEEN

**LEONARD K MBUVI T/A KATUNGA MBUVI & CO
ADVOCATES APPLICANT**

AND

JOE MUSYIMI MUTAMBI RESPONDENT

RULING

1. On 27/6/2023, the respondent applied for stay of execution of the decree herein pending the hearing of a reference against the taxation of 14/4/2021. The court granted the stay order ex-parte on 28/6/2023 and directed the application to be served for directions on 4/7/2023. On the said 4/7/2023, the court gave substantive directions and fixed the 26/9/2023 as the date for giving a ruling date.
2. As at that date and upto the 30/11/2023, the respondent/client had not complied with the directions of the court. He had not filed any submissions to prosecute his said application.
3. Angered by that lethargy on the part of the respondent, on 7/12/2023, the applicant/advocate took out a Motion on Notice under, inter alia, sections 1, 1B, 3 and 3A of the *Civil Procedure Act*. He sought the striking out of that Motion and the discharge of the aforesaid ex-parte order on the grounds that the respondent was not willing to prosecute his application since he was enjoying the ex-parte orders. The motion was supported by the Advocates affidavit of the same date. He rehearsed the history of the matter and swore how he believed the respondent was not interested in prosecuting the matter since he had the orders of stay in place.
4. The application was opposed vide grounds of opposition dated 14/12/2023. It was contended that the Motion was an abuse of the Court Process and was geared towards disrupting the hearing of the respondent's application fixed for mention on 13/3/2024.



5. I have considered the application, the grounds of opposition and the oral submissions. It is not in dispute that the averments on oath by the applicant were not denied. That the respondent was enjoying an ex-parte order given to him on 28/6/2023. That he had deliberately failed to prosecute his application dated 27/6/2023. That by failing to comply with the directions of the Court made on 4/7/2023 and the subsequent dates, the respondent is in breach of Section 1A (3) of the *Civil Procedure Act*.
6. It is clear that on 4/7/2023, one of the directions given was that the Respondent do file submissions for the Applicant to respond. The applicant failed to file those submissions even upto the 30/11/2023. It is clear that because of the comfort given by the ex-parte order the respondent is not willing to prosecute his said application. He can only be jolted into action if exposed by the lifting of the ex-parte order.
7. Accordingly, I grant prayer No. 3 of the Motion dated 7/12/2023 and discharge the stay order made on 28/6/2023. Since the applicant had sought the striking out of the Motion dated 27/6/2023 which I have declined, each party to bear own costs of the application.

It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 17TH DAY OF JANUARY, 2024.

A. MABEYA, FCI ARB, EBS

JUDGE

