



**Chemjor v Kenya Commercial Bank (Civil Suit 15 of 2019)
[2024] KEHC 1148 (KLR) (13 February 2024) (Ruling)**

Neutral citation: [2024] KEHC 1148 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CIVIL SUIT 15 OF 2019
RN NYAKUNDI, J
FEBRUARY 13, 2024**

BETWEEN

JOHN KIBET CHEMJOR PLAINTIFF

AND

KENYA COMMERCIAL BANK DEFENDANT

RULING

1. The applicant approached this court *vide* a Notice of Motion Application dated 10th November 2023 seeking the following orders;
 - (1) That the plaintiff's suit be dismissed for want of prosecution.
 - (2) That the costs of the application and the suit shall be borne by the plaintiff.
2. The application is premised on the grounds set out therein and the averments in the supporting affidavit sworn by Beatrice Kipsesei, the advocate in conduct of the matter on behalf of the respondent.
3. The applicant contends that the suit was filed by the plaintiff in 2019 and was last in court on 12th July 2022 when this court delivered a ruling on the plaintiffs' application for an injunction dated 8th April 2019. The court dismissed the application with costs to the defendant and since then the plaintiff's lawyers have never taken steps to set down the matter for hearing. She stated that the delay in prosecuting the suit is unexplained and inordinate, urging the court to allow the application and dismiss the same.
4. It is evident from the affidavit of service on record that the respondent was served with the application and there is no response on record.

It follows that there is only one pertinent issue for determination;

1. Whether the suit should be dismissed for want of prosecution



Decision

Whether the suit should be dismissed for want of prosecution

5. Dismissal of suits for want of prosecution is governed by Order 17 Rule 2(1) of the [Civil Procedure Rules](#) which provides as follows:

“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.”

Further Order 17 rule 2(3) of the [Civil Procedure Rules](#), states thus:

“Any party to the suit may apply for its dismissal as provided in sub-rule 1”

6. The statutory threshold set out under Order 17 Rule 2 of the [Civil Procedure Rules](#) is that a suit qualifies to be dismissed for want of prosecution: if no application has been made or no step has been taken in the suit by either party for at least one year preceding the presentation of the application seeking dismissal of the suit.
7. The principles for dismissal for want of prosecution were discussed in the case of [Argan Wekesa Okumu v Dima College Limited & 2 others](#) [2015] eKLR where Justice A. Mabeya stated as follows:-

“The principles governing applications for dismissal for want of prosecution are well settled and have been established by a long line of authorities. The Applicant must show that the delay complained of is inordinate, that the inordinate delay is inexcusable and that the Defendant is likely to be prejudiced by such delay.

8. The purpose Order 17 rule 2 (3) of the [Civil Procedure Rules](#) is derived from the policy that court cases must be heard and disposed of expeditiously. This calls for the vigilance of the parties. Therefore, the court must determine whether; The delay is inordinate The defendant shall be prejudiced by the delay

9. In the comparative jurisprudence the court in [Cassimje v Minister](#) (SCA) held that;

“There are no hard and fast rules as to the manner in which the discretion to dismiss an action for want of prosecution is to be exercised. But the following requirements have been recognised. First, there should be a delay in the prosecution of the action, second, the delay must be inexcusable and third, the defendant must be seriously prejudiced thereby. Ultimately the inquiry will involve a close and careful examination of all the relevant circumstances, including the period of the delay, the reasons therefore and prejudice, if any, caused to the defendant. There may be instances in which the delay is relatively slight but serious prejudice is caused to the defendant, and in other cases the delay may be inordinate but prejudice to the defendant is slight. The court should also have regard to the reasons, if any, for the defendant’s inactivity and failure to avail itself or remedies which it might reasonably have been expected to do in order to bring the action expeditiously to trial.”

10. The [Civil Procedure Act](#) Sections 1 (A) 1(B) as read with Section 3 (A) entrenches the concepts for the courts to facilitate the just, expeditious, proportionate and affordable resolution of disputes. For purposes of furthering the overriding objective in Section 1 (A), the court shall handle all matters presented before it for purpose of attaining the following aims.



- (a) The just determination of the proceedings.
 - (b) the efficient disposal of the business of the court.
 - (c) the efficient use of the available judicial and administrative resources.
11. In light of these principles the construction of Order 17 Rule 2 permits the court to dismiss in appropriate circumstances a cause of action for want of prosecution. This per se would not be considered unconstitutional. On the other hand, it would constitute a justifiable limitation of rights under Art.24 of the Constitution as read with Art.48 on the Constitutions right of access to the courts.
12. It is evident from the record of the court that this matter was last in court on 12th July 2022 and since then, no meaningful steps have been taken by the plaintiff for over a year. Further, the delay is not explained as the plaintiff has chosen not to respond to the application for want of prosecution. Pending court cases can weigh heavily on a party both financially and psychologically thus occasioning prejudice. Courts are always reluctant to resort to dismissing a suit but in the present case, this suit is ripe for dismissal.
13. In the premises the suit is dismissed for want of prosecution with costs of the application and the suit to be borne by the plaintiff in accordance with section 27 of the Civil Procedure Act.

DELIVERED, DATED AND SIGNED AT ELDORET ON THIS 13TH DAY OF FEBRUARY, 2024

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R. NYAKUNDI

JUDGE

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