



Weda v Nairobi Star Publications Ltd & 2 others (Civil Case 376, 571 & 395 of 2008 (Consolidated)) [2024] KEHC 2646 (KLR) (Civ) (8 March 2024) (Ruling)

Neutral citation: [2024] KEHC 2646 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL CASE 376, 571 & 395 OF 2008 (CONSOLIDATED)

CW MEOLI, J

MARCH 8, 2024

BETWEEN

AMBROSE OTIENO WEDA PLAINTIFF

AND

NAIROBI STAR PUBLICATIONS LTD 1ST DEFENDANT

PAULINE ODHIAMBO 2ND DEFENDANT

AS CONSOLIDATED WITH

CIVIL CASE 571 OF 2008

BETWEEN

AMBROSE OTIENO WEDA PLAINTIFF

AND

NAIROBI STAR PUBLICATIONS LTD 1ST DEFENDANT

VINCENT AGOYA 2ND DEFENDANT

AS CONSOLIDATED WITH

CIVIL CASE 395 OF 2008

BETWEEN

AMBROSE OTIENO WEDA PLAINTIFF

AND



NAIROBI STAR PUBLICATIONS LTD 1ST DEFENDANT
VINCENT AGOYA 2ND DEFENDANT

RULING

1. Pursuant to directions given by the High Court on 29th January 2010, the abovementioned Civil Case No. 376 OF 2008, Civil Case No. 571 OF 2008 and Civil Case No. 395 OF 2008 (hereafter the 1st, 2nd and 3rd suits) were consolidated. The 1st suit was appointed the lead file. For ease of reference therefore, the court will hereafter proceed to refer to the three consolidated suits as the 1st suit, and the parties as they appear and, in the order set out in the 1st suit, as follows:
 - i. Ambrose Otieno Weda (the Plaintiff)
 - ii. The Nairobi Star Publications Ltd (the 1st Defendant)
 - iii. Pauline Odhiambo (the 2nd Defendant)
2. The Plaintiff's Notice of Motion dated 15th June, 2023 (the Motion) is the subject matter of this ruling. The Motion seeks an order directing that the file pertaining to the 1st suit be transferred to the Chief Magistrate's Court for hearing and determination. It is expressed to be brought under Sections 1A and 1B of the *Civil Procedure Act* (CPA) and is anchored on the grounds thereon as amplified in the affidavit of the Plaintiff. Therein the Plaintiff averred that the claim in the 1st suit falls within the pecuniary jurisdiction of the Chief Magistrate's Court and hence it would be prudent for the same to be transferred there, in furtherance of the overriding objective of the CPA. The Plaintiff further averred that none of the parties herein will be prejudiced if the Motion is granted.
3. The 1st and 2nd Defendants jointly resisted the Motion through the Grounds of Opposition dated 4th July, 2023, to the effect that:
 1. In a ruling delivered on 14th February 2019 by Hon. Lady Justice L. Njuguna on a notice to show cause why this suit should not be dismissed for want of prosecution, the Plaintiff was required to take the necessary steps to prosecute the suit within 120 days from that date, failing which the suit stood dismissed.
 2. The Plaintiff failed to prosecute the suit within the stipulated time frame, hence the suit stood dismissed on or about 14th June, 2019. Therefore, there is no suit to be transferred to the Chief Magistrate's Court for hearing and determination as prayed in the Plaintiff's application.
 3. The Plaintiff has not offered any credible, satisfactory or sufficient explanation for his failure to apply to reinstate the suit, nor his filing of an application to transfer a dismissed suit, more than four years after its dismissal.
 4. As indicated in the ruling of Hon. Lady Justice L. Njuguna, the Defendants had previously applied to have the suit dismissed for want of prosecution. The said application was dismissed on condition that the Plaintiff prosecuted his suit within 60 days from 25th February 2014. The Plaintiffs' failure to do so led the Court, on its own motion, to issue a notice to show cause on 28th September 2017 and which was the subject of the ruling delivered on 14th February 2019.



5. Therefore, it is manifestly clear that the Plaintiff is not keen on prosecuting his case, to the Defendants' prejudice in terms of availability of witnesses and their recollection of the events more than 15 years from the material time. sic
4. The Motion was canvassed by way of oral arguments by the parties' respective advocates, despite the court having granted leave for the parties to file simultaneous written submissions if they so wished.
5. Counsel for the Plaintiff asserted that at the time of filing the Motion, he had no knowledge that the 1st suit had been dismissed. Stating by way of explanation that the advocate who had conduct of the suit previously, died and that no notice of dismissal of the suit was served upon his firm. He contended that the Plaintiff is keen on prosecuting the respective suits.
6. In response, counsel for the 1st and 2nd Defendants relied on the Grounds of Opposition. Adding that the untimely death of the Plaintiff's former advocate occurred outside the stipulated timelines within which the 1st suit ought to have been prosecuted. Moreover that, the period set out under Order 17, Rule 2(5) of the Civil Procedure Rules for prosecution of the suits had long lapsed and hence the 1st suit stood dismissed. For those reasons, counsel urged the court to dismiss the Motion.
7. In rejoinder, the Plaintiff's counsel urged the court to be guided by the proceedings showing efforts made by the Plaintiff to prosecute the suit.
8. The court has considered the prayer in the Motion, the supporting affidavit, Grounds of Opposition thereto and the parties' competing arguments. Whilst the Plaintiff seeks the transfer of the court file to the Chief Magistrate's Court, a pertinent issue raised by the relates to the question whether any suit exists herein, to warrant the order sought in the Motion.
9. Upon its own study of the record, the court observed that the court had issued a notice to show cause (NTSC) dated 28th September 2017 requiring the parties to show cause why the suit should not be dismissed for want of prosecution. The parties in obedience to the NTSC attended court on the scheduled date and made representations. Subsequently, the court in a ruling delivered on 14th February 2019 while sustaining the suits made an order directing the Plaintiff to prosecute the suit within a period of 120 days therefrom, failing which the suit would stand dismissed for want of prosecution.
10. From the record, it is apparent that save for a subsequent letter or two, from the Plaintiff's firm to the Defendants' advocates inviting them to fix a date at the registry, no substantive steps were taken to progress the matter in accordance with the court's directions. This notwithstanding, time continued to run. The Plaintiff did not seek an extension of time to enable him to comply with the order of 14th February 2019. Hence, the court concurs with the Defendants' argument that, because of the Plaintiff's non-compliance with the court's orders of 14th February 2019, the 1st suit stood dismissed upon the lapse of the 120-day timeline, i.e. by 14th June 2019. As things stand therefore, there is no suit subsisting herein, and upon which the Motion can be anchored, or one capable of transfer.
11. Consequently, the Notice of Motion dated 15th June, 2023 is hereby struck out, with costs to the 1st and 2nd Defendants. For the avoidance of doubt, this ruling shall also apply to Civil Case No. 571 of 2008 and Civil Case No. 395 of 2008.

DELIVERED AND SIGNED ELECTRONICALLY AT NAIROBI ON THIS 8TH DAY OF MARCH 2024.

C.MEOLI
JUDGE



In the presence of:

For the Plaintiff: Mr. Mukonyi

For the Defendants: Mr. Biko Angwenyi

C/A: Carol

