



REPUBLIC OF KENYA



Omondi v Mwanthi & 12 others (Sued as the Managing Committee of KIFWA Mombasa Branch) (Civil Case E035 of 2021) [2024] KEHC 6263 (KLR) (9 May 2024) (Ruling)

Neutral citation: [2024] KEHC 6263 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
CIVIL CASE E035 OF 2021
DKN MAGARE, J
MAY 9, 2024**

BETWEEN

MICHAEL OKACH OMONDI PLAINTIFF

AND

ROY F. MWANTHI 1ST DEFENDANT

MOHAMED RAMADHAN 2ND DEFENDANT

MUSA O. MBIRA 3RD DEFENDANT

CHRISTINE MUKANGI 4TH DEFENDANT

ADAN ELMI 5TH DEFENDANT

ABUD S. JAMAL 6TH DEFENDANT

RONALD O. OMWOYO 7TH DEFENDANT

JEBBIFER W. MWANGI 8TH DEFENDANT

PATRICK O. OKE 9TH DEFENDANT

HASSAN MBARAK 10TH DEFENDANT

ERASTUR MUCHIRI 11TH DEFENDANT

BELTSHEZER KIVUVA 12TH DEFENDANT

NAOMI KINGOLI 13TH DEFENDANT

SUED AS THE MANAGING COMMITTEE OF KIFWA MOMBASA BRANCH



RULING

1. This is in respect of an application dated 27/4/2023 seeking to dismiss the suit for want of prosecution. The suit was filed on 144 of 2021. This was a dispute between members of Kenya International Freight and Warehousing Association. It was a company, as usual with a notice of motion 8/4/2021. This was subsequently dismissed by Hon. Justice Njoki on 25/2/2022.
2. The matter was listed for direction on 3/7/2023 for 1/8/2023. Instead of taking directions the Application indicated they had an application on 29/9/2023 the matter came before me I gave directions for 12/10/2023.
3. On 12/10/2023, I gave directions for 6/11/2023. On the said date the Applicant indicated that they have an application. Mr. Mkan indicated that he had been the matter on the cause list. I gave directions for responses.
4. The parties have been dwelling in court. The date that was fixed for hearing direction the Applicant filed the Application. This matter has not been dismissed even once. There is therefore a question whether it is true that the Plaintiff has not prosecuted the matter Order 17 Rule 2 provides as doth:-
 - “(1) 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.
 - (2) If cause is shown to the satisfaction of the court it may make such orders as it thinks fit to obtain expeditious hearing of the suit.
 - (3) Any party to the suit may apply for its dismissal as provided in sub-rule 1.
 - (4) The court may dismiss the suit for non-compliance with any direction given under this Order.
 - (5) A suit stands dismissed after two years where no step has been undertaken.
 - (6) A party may apply to court after dismissal of a suit under this Order.”
5. In the case of Mukisa Biscuit Manufacturing Co. Ltd vs West End Distributors Ltd [1969] EA 696 the court stated as follows: -

“In cases falling outside the specific provisions quoted above. Farrel, J., adopted this view. Dalton, J, in Saldanha’s case purported to follow the decision of Windham m CJ in Mulji v Jadavji, [1963] EA 217, but all that case decided was that the courts inherent jurisdiction could not be invoked where an l alternative remedy had been available. In the instant case, it is clear that none of the specific provisions for dismissing suits applied to the suit the subject of this appeal. That being so, I do not see how the courts inherent jurisdiction can be said to be fettered, as no alternative remedy existed.”
6. I find that the application for dismissal is premature. I therefore dismiss the same. I direct that parties comply for pre-trial direction be given.
7. The matter shall be heard and concluded by 17/5/2025 failing which it shall stand dismissed.



Determination

8. I make the following orders: -

- a. The application dated 27/4/2023 is dismissed with no order as to costs.
- b. The parties to comply with Order 11 for directions on 17/6/2024.
- c. Each party to bear their costs.
- d. The suit be concluded by 17/8/2025 failing which this suit shall stand dismissed.

**DELIVERED, DATED AND SIGNED AT MOMBASA ON THIS 9TH DAY OF MAY, 2024. RULING
DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.**

KIZITO MAGARE

JUDGE

In the presence of:-

M/s B.W. Kenzi & Co. Advocates for the 1st, 3rd, 5th, 6th, 9th, 11th and 13th Defendants

Ragira Gedeon & Co. Advocates for the Plaintiff

M/s Mkan & Company Advocates for the 2nd, 4th, 7th, 8th, 10th and 12th Defendants

Court Assistant- Norah

