



REPUBLIC OF KENYA



KENYA LAW
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**Neat Holdings (K) Limited v County Government of Kiambu (Civil
Suit 6 of 2017) [2024] KEHC 7527 (KLR) (7 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 7527 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CIVIL SUIT 6 OF 2017
DO CHEPKWONY, J
JUNE 7, 2024**

BETWEEN

NEAT HOLDINGS (K) LIMITED APPLICANT

AND

COUNTY GOVERNMENT OF KIAMBU RESPONDENT

RULING

1. This is a ruling in respect of the Notice of Motion application dated 28th July, 2023 which seeks the following orders:-
 - a. This Honourable Court be pleased to set aside and vacate the orders issued on 19th July, 2023 dismissing the Plaintiff's suit.
 - b. This Honourable Court reinstates the Plaintiff/Applicant's suit for proper determination on merit.
 - c. Spent.
 - d. Costs of the application be in the cause.
2. The Application is based on the grounds as set out on its face and the Supporting Affidavit of Sylvia Njambi Chege as the Director of the Applicant sworn on 28th July, 2023. It is the Applicant's contention that the suit came up for mention on 19th July, 2023 for parties to show cause why the suit should not be dismissed, a Notice to Show Cause dated 8th December, 2022 having being issued due to non-appearance by the Plaintiff. In response, the deponent holds that a Replying Affidavit was filed in court on 9th December, 2022 wherein the circumstances that caused the advocate for the Plaintiff not to attend court on 21st September, 2022 when the matter came up for pre-trial conference, were explained. She confirms that the Applicant had fully complied with Order 11 of the *Civil Procedure Rules* and



was awaiting a hearing date to be set. She states that the failure to attend court on 19th July, 2023 was not deliberate as the Counsel attending the matter was on the platform waiting to be admitted.

3. According to the Applicant, he has a legitimate claim against the Respondent who has not paid a sum of Kshs. 5,138,210/= which claim was filed way back in the year 2017 and attributes the delay on the Respondent who she says had requested to be allowed time to verify the documents. It is averred that the Plaintiff desires to be heard on merit and unless the order of dismissal is set aside, it stands to suffer prejudice. The deponent avers that the Plaintiff is ready and willing to abide by such terms that the court will impose.
4. The Plaintiff's Counsel also filed an Affidavit which was sworn by Brown Murungi Kairaria on behalf of the Plaintiff on 28th July, 2023. He states that on the 19th July, 2023, he instructed his colleague Mr. Gitonga Mutege, Advocate to hold his brief in the matter as he was scheduled to attend a tribunal session on Industrial Property. He goes on to state that once he was done with the session, he called the said Mr. Mutege to follow up with the court proceedings and he informed him that he had not been admitted to the meeting. That he then logged into the session and found the court has started on criminal matters and he established from the portal that the suit had been dismissed. That he has now made this application to have the suit reinstated so that the suit can proceed for hearing on merit and he urges the court to allow the application.

Determination

5. The court has read the notice of motion, the supporting affidavit and the Affidavit filed by the Plaintiff's Counsel and finds that the main issue for consideration is whether the suit should be reinstated.
6. The principles governing reinstatement of suits were stated in the case of *John Nabashon Mwangi –vs- Kenya Finance Bank Limited* (in Liquidation) [2015] eKLR as follows:-

“The fundamental principles of justice are enshrined in the entire Constitution and specifically in Article 159 of *the Constitution*. Article 50 coupled with Article 159 of the *Constitution* on right to be heard and the constitutional desire to serve substantive justice to all the parties, respectively, constitutes the defined principles which should guide the court in making a decision on such matter of reinstatement of a suit which has been dismissed by the court. These principles were enunciated in a masterly fashion by courts in a legion of decisions which I need not multiply except to state that; courts should sparingly dismiss suits for want of prosecution for dismissal is a draconian act which drives away the Plaintiff in an arbitrary manner from the seat of Judgment. Such acts are comparable only to the proverbial “Sword of the Damocles” which should only draw blood where it is absolutely necessary. The same test will apply in an application to reinstate a suit and a court of law should consider whether there are reasonable grounds to reinstate such suit-of course after considering the prejudice that the defendant would suffer if the suit was reinstated against the prejudice the Plaintiff will suffer if the suit is not reinstated.”

7. This court has considered the reason advanced by the Plaintiff on why its counsel failed to attend court on 19th July, 2023 and the claim it has against the Defendant. Upon going through the grounds in the Replying Affidavit, I find the circumstances which led to counsel failing to attend court, provide sufficient explanation. I also find the claim against the defendant substantive enough that it would be more prejudicial to the Plaintiff than the Defendant if the dispute is not resolved on merit. There is even an unrebutted claim by the Plaintiff that Defendant I partly to blame for the delay in having the suit prosecuted as it had sought for time to verify the Plaintiff's claim way back in 2017. Furthermore,



as a demonstration of good faith, the instant application was timeously filed within seven (7) days of the dismissal of the suit.

8. On account of all the aforesaid reasons, this Court finds that it is necessary to have the suit re-instated so that the parties can be heard and a decision arrived at on merit. The court proceeds to allow the Notice of Motion application dated 28th July, 2023 with the following orders and or directions:-
 - a. The orders issued on 19th July, 2023 dismissing the Plaintiff's suit be and are hereby set aside and or vacated.
 - b. The Plaintiff's suit is thus re-instated for proper hearing and determination on merit.
 - c. Given that this is an old matter, the same having been instituted in the year 2017, and compliance with pre-trial directions under Order 11 of the *Civil Procedure Rules* having been confirmed, the suit to be heard on priority basis.
 - d. Hearing on 15th October, 2024.
 - e. Costs to be in the cause.

It is so ordered.

RULING DATED AND SIGNED AT KIAMBU THIS 7TH DAY OF ..JUNE...., 2024.

D. O. CHEPKWONY

JUDGE

