



**Njonjo (Suing on behalf of the Estate of Solomon Kinyanjui Wanjiru
(Deceased) v Kenya Power and Lighting Company & another (Civil
Appeal 77 of 2018) [2024] KEHC 9351 (KLR) (7 June 2024) (Judgment)**

Neutral citation: [2024] KEHC 9351 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CIVIL APPEAL 77 OF 2018
DO CHEPKWONY, J
JUNE 7, 2024**

BETWEEN

**JANE WANJIRU NJONJO (SUING ON BEHALF OF THE ESTATE OF
SOLOMON KINYANJUI WANJIRU (DECEASED)) APPELLANT**

AND

KENYA POWER AND LIGHTING COMPANY 1ST RESPONDENT

JOSIAH KINUTHIA MUTURI 2ND RESPONDENT

JUDGMENT

1. This Judgment emanates from the Memorandum of Appeal dated 20th July, 2018 and filed by the Appellant. By way of background, the suit herein was commenced way back in the year 2012. It arose from a road traffic accident which occurred on 24th November, 2011 whereupon the Plaintiff, Solomon Kinyanjui Wanjiru (hereinafter referred to as ‘the Appellant’) sustained bodily injuries and filed his Plaintiff dated 16th March, 2012. The Plaintiff succumbed to the injuries on 29th March, 2013.
2. Upon being served, the Defendants filed Defence dated 10th December, 2012 together with their accompanying documents.
3. His Counsel filed an Application dated 29th March, 2016 seeking leave to substitute the deceased out of time and amend the Plaintiff dated 16th March, 2012. The same was unopposed and on 14th June, 2016, the trial court granted the same as prayed.
4. The Plaintiff’s Counsel then filed Notice of Motion dated 3rd February, 2017 seeking to have the order of 14th June, 2016 extended for reasons that the Plaintiff had financial difficulties to get the court filing fees on time. The Application was opposed through Grounds of Opposition dated 15th March, 2017 that the application was an abuse of the court process and meant to delay the course, of justice and urged the trial court to dismiss the application.



5. On 27th June, 2017, allowed the trial court allowed the application and extended the order of 14th June, 2016 for a further period of seven (7) days on what it stated to be in the interest of justice and gave a rider that the Plaintiff fixes the matter for hearing and for the same to be heard within eight (8) months otherwise the suit would stand dismissed.
6. The matter went silent until the Plaintiff's Counsel filed an application dated 22nd June, 2018 which sought the following orders:-
 - a. That Judgment on liability in Kikuyu CMCC No. 224 of 2015 Benson Waihenya Ngendo v Kenya Power and Lighting Company Ltd & Josiah Kinuthia Muturi do apply in this suit Kikuyu CMCC No. 152 of 2012 Jane Wanjiru Njonjo (Suing on behalf of the estate of Solomon Kinyanjui Wanjiru deceased v Kenya Power and Lighting Company Ltd & Josiah Kinuthia Muturi.
 - b. That parties do submit on quantum of damages.
 - c. That the Amended Plaint filed be deemed duly filed and served.
 - d. That the Plaintiff's suit be reinstated on such terms as the court may deem it fit.
 - e. That costs of the suit be provided for.
7. The Application was opposed through Grounds of Opposition dated 26th June, 2018 wherein it was stated that the application was an abuse of court process having been filed after the eight (8) months' timeline granted by the trial court in its ruling of 27th June, 2016.
8. On 3rd July, 2018, the trial court held that the case stood dismissed as per its Ruling of 27th July, 2017 and there was nothing it could do to help the Plaintiff as the case was an old one.
9. The Plaintiff's Counsel again filed an Amended Notice of Motion dated 26th November, 2018 seeking similar orders save that the Amended Plaint filed on 22nd June, 2018 and served on 25th June, 2018 be validated. This was again opposed through Amended Grounds of Opposition dated 7th February, 2019 and a Replying Affidavit sworn by Naomi Wandia Njenga on 7th February, 2019 wherein the Defendant/Respondent opposed the reinstatement of the suit and sought for the application to be dismissed.
10. On 27th November, 2018, the trial court held that it could not understand why the matter had been fixed for hearing yet the suit was already dismissed by the orders of 27th June, 2017.
11. Aggrieved by the court decision of 3rd July, 2018, the Plaintiff lodged the Appeal in this court vide a Memorandum of Appeal dated 20th July, 2018 on the following grounds:-
12. The Appeal was admitted for hearing on 3rd June, 2021 and on 27th March, 2023, the court directed the parties to canvass the same by way of written submissions. The Appellant filed her submissions dated 27th September, 2023 whereas the Respondent filed theirs dated 28th August, 2023. The court has duly read through, noted the party's respective arguments for consideration in its determination.
13. In essence, the Appellant has submitted that she is seeking reinstatement of the suit and have an opportunity to present her case. She holds that the dismissal of the suit was a draconian move and a death sentence to her claim without being accorded a chance to explain the reason for her delay or mistake in having the trial court's orders and or directions complied with.
14. In opposition, the Respondent submitted that the trial suit abated on 29th March, 2014 which is one year after the death of the Plaintiff and no application was filed to revive it. That, the application



dated 29th March, 2016 sought to have the Plaintiff substituted without seeking revival of the suit. The Respondent goes on to submit that the trial court allowed the said application but the Appellant failed to abide with the timeline it had set, even after an extension of time was sought and granted, thus the suit stood dismissed as at 27th February, 2018. The Respondent had contended that by the time the application dated 22nd June, 2018 was filed, the suit had already been dismissed and which was also noted by the court on 3rd July, 2018. The Respondent has thus urged the court to uphold the ruling of the trial court issued on 3rd July, 2018.

Analysis and Determination

15. This being the first appellate court, it has the power to analyse and evaluate the findings, of fact as well as of the law, recorded by the trial court so as to ascertain its or their correctness. To this extent, the Judgment in the first appeal must address itself to all the issues of law and fact and decide it by giving reasons in support or against it, (See case of *Selle & Another –vs- Associated Motor Boat Co. Ltd & Another*).
16. Having read through the original record of proceedings before the trial court in consideration of the grounds of appeal, this court finds that it is common ground that the trial suit is an old matter which dates back to 2012. It is also common ground that pending suits should be finalised in the shortest time possible and this can only be done through the efforts of the parties in striving to have their suits prosecuted expeditiously.
17. From the history of this suit, the same took off after filing of the Plaint but before the same could be set down for hearing the Plaintiff died and the suit took a different turn. It is trite law that upon the demise of a party being a sole Plaintiff or surviving Plaintiff in a suit, Order 24 of the Civil Procedure Rules allows for substitution of such Plaintiff but the same should be made within one year otherwise the suit shall abate.

Order 24 Rule 3 of the Civil Procedure Rules states as follows:-

“

“[1]. Where one of two or more Plaintiffs dies and the cause of action does not survive or continue to the surviving Plaintiff or Plaintiffs alone, or a sole Plaintiff or sole surviving Plaintiff dies and the cause of action survives or continues, the court, on an application made in that behalf, shall cause the legal representative of the deceased Plaintiff to be made a party and shall proceed with the suit.

[2]. Where within one year no application is made under sub rule (1), the suit shall abate so far as the deceased Plaintiff is concerned, and, on the application of the Defendant, the court may award to him the costs which he may have incurred in defending the suit to be recovered from the estate of the deceased Plaintiff;

Provided the court may, for good reason on application, extend the time.”

18. In the instant suit, it is evident that the suit was initiated on 16th March, 2012. The Appellant succumbed on 29th March, 2023 and was granted leave to amend Plaint on 14th June, 2016. It is also evident that the application for revival of the suit was and has never been made, hence the suit already abated. In exercise of its discretion, the trial court granted the Appellant audience and issued timelines for it to comply with the court orders of seven (7), which period was again extended for another seven



(7) days but the Appellant failed to comply with the court orders and the court held that the case stood dismissed.

19. Further, it is trite law that court orders ought not be issued in vain as they are meant to be complied with. Therefore, the Appellant ought to have complied with the timelines issued by the trial court but she failed to do so.
20. This court being an Appellate one it can only disturb the decision of the trial court if it is shown erroneous in principle and law. In this case the court finds that the decisions of the trial court was not erroneous to warrant its interference. Indeed the Appellant did not take any steps to prosecute the suit before the trial court. But also, the reasons given for the delay were not sufficient enough to warrant reinstatement of the suit.
21. In conclusion, this court finds the Appeal herein lacks merit and the same is hereby dismissed with costs to the Respondents.

It is so ordered.

**RULING DATED, SIGNED AND DELIVERED AT KIAMBU VIA ELECTRONIC MAIL THIS ...
7TH ...DAY OF ...JUNE....., 2024.**

D. O. CHEPKWONY

JUDGE

In the presence of:

Mr. Kasina counsel for Appellant

M/S Njenga counsel for Respondent

Court Assistant - Martin

