



**Waitinga v Independent Electoral and Boundaries Commission & 2 others (Miscellaneous Application 235 of 2017) [2024] KEHC 8596 (KLR) (15 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 8596 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIAMBU  
MISCELLANEOUS APPLICATION 235 OF 2017  
DO CHEPKWONY, J  
JULY 15, 2024**

**BETWEEN**

**MILTON KIMANI WAITINGA ..... PETITIONER**

**AND**

**INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION .... 1<sup>ST</sup>  
RESPONDENT**

**NJOKI NJERU ROSEMARY ..... 2<sup>ND</sup> RESPONDENT**

**WAMACUKURU GITHUA KAMAU ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. This is a ruling in respect of a Notice of Motion application dated 14<sup>th</sup> November, 2023 which seeks the following orders:
  - a. Spent.
  - b. That this Honourable Court be pleased to set aside the Orders of Hon Judge L. N. Mugambi of 16<sup>th</sup> January, 2023 that dismissed the suit.
  - c. That this Honourable Court be pleased to reinstate the suit for prosecution of the 3<sup>rd</sup> Respondent's Party and Party Bill of Costs dated 14<sup>th</sup> November, 2017.
  - d. That this Honourable court be pleased to grant any further orders it deems fit in the circumstances.
  - e. That costs of this application be provided for.
2. The Application is based on the grounds set on the face of it and the Supporting Affidavit of James Githua Wamacukuru. It is the Applicant's case that Party and Party Bill of Costs dated 16<sup>th</sup> January,



2023 was dismissed for want of prosecution over inaction in the matter for over one year. He states that the mother file being Election Petition No 2 of 2017 could not be traced and he instructed his advocate to reconstruct a skeleton file for purposes of taxation of the said bill of costs which was done and the file was allocated the number of this present matter being Misc 235 of 2017.

3. The Applicant holds that he is now seeking reinstated of the suit disposal of Party and Party Bill of Costs dated 14<sup>th</sup> November, 2017 so that the suit can be concluded expeditiously.
4. The application was served upon the 1<sup>st</sup> and 2<sup>nd</sup> Respondents' Advocates and an Affidavit of Service was filed sworn by Samini Chivatsi Stamili on 4<sup>th</sup> December, 2023 filed to confirm this but no response has been filed to date. Be that as it may, the court is still required to consider the merits of the application.
5. From the record, this is a 2017 matter where the first action therein was taken on 1<sup>st</sup> March, 2018 when the matter was fixed for mention. However, there was nothing recorded on that day. The next time the matter was in court was on 17<sup>th</sup> March, 2022 when the matter was placed the Deputy Registrar but there was no representation for either party. The matter was again placed before court on 16<sup>th</sup> January, 2023 but there was still no appearance by the parties and the court noted that the parties had been notified that the matter was scheduled for dismissal on that day through the Kenya Law Reports.. The court stated that there had been no action in the matter for over one year and no cause had been shown to justify why case was dismissed for want of prosecution.
6. The court notes that the case was dismissed for having been inactive for over one year. The present application is dated November, 2023 which is more than eleven months after the said dismissal and closure of the file. Having read through the grounds upon which the Application is premised, the court finds that he has not explained the reasons it took him so long to file the application or even take a step in the matter since 2017 when it was filed. It is clear that by his lax conduct, the Applicant has lost interest in the matter and it thus deserves to be dismissed for want of prosecution.
7. To this end, the court finds that the reasons that have been advanced reinstatement of the suit are not substantive and leave the application is dismissed with no orders as to costs.

It is so ordered.

**RULING DATED, SIGNED AND DELIVERED AT KIAMBU VIA  
ELECTRONIC MAIL THIS ...15<sup>TH</sup> ...DAY OF ...JULY....., 2024.**

**D. O. CHEPKWONY**

**JUDGE**

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