



**Willie & another v Unaitas Sacco Society Limited & another;
Bricks Holdings and Engineering Ltd (Interested Party) (Civil Suit
28 of 2016) [2024] KEHC 11064 (KLR) (20 September 2024) (Ruling)**

Neutral citation: [2024] KEHC 11064 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CIVIL SUIT 28 OF 2016
DO CHEPKWONY, J
SEPTEMBER 20, 2024**

BETWEEN

JOSHUA KAMAU WILLIE 1ST PLAINTIFF

MARY NDATA KAMAU 2ND PLAINTIFF

AND

UNAITAS SACCO SOCIETY LIMITED 1ST DEFENDANT

INTEGRA AUCTIONEERING K CO 2ND DEFENDANT

AND

BRICKS HOLDINGS AND ENGINEERING LTD INTERESTED PARTY

RULING

1. What is before the court for determination is the Notice of Motion application dated 26th May, 2023 which seeks the following orders:
 - a. That this Honourable court be pleased to grant leave to the Plaintiffs/Applicants to amend their plaint.
 - b. That on grant of prayer No.(1) above, the draft amended plaint be deemed duly filed upon payment of requisite fees.
2. The Application is based on the grounds on its face and the Supporting Affidavit of Joshua Kamau Willie sworn on the instant date. According to the Applicant, the suit was filed back in 2016 but the hearing is yet to commence. The Applicant holds that it discovered after the filing of the suit that the 1st Defendant held a public auction over the suit property L.R No. 21096/228 (Original 21096/215/10) to itself irregularly and therefore there is need for amendment of the pleadings. It is averred that the



amendments will assist the court to adjudicate the real issues in question and no prejudice will be caused on the part of the Respondents, if the orders are allowed.

3. The Respondents opposed the application through the Grounds of Opposition dated 17th July, 2023 as follows:-
 - a. That the application is incompetent having been draw and presented by advocates who are not properly on record for the applicants.
 - b. That in any case there is no suit in existence in this matter as the same stood dismissed by operation of law under the provisions of Order 17 Rule 2 (5) of the Civil Procedure Rules on 23rd October, 2021 or thereabouts when a period of two years since the last action in the matter was taken on 24th October, 2019 lapsed.
4. The court directed the application to be canvassed by way of written submissions. In the Applicant's submissions dated 4th March, 2024, the applicant reiterates his position as raised in the application that the amendments are necessary for the court to adjudicate the issues in question. They further argue that the Respondents only filed Grounds of Opposition and thus did not substantively respond to the merits of the application.
5. In the Submissions dated 28th May, 2024, the Respondents argue that the amendments of pleadings can only be done when the suit is still alive. It is submitted that in the suit, no action was taken since 24th October, 2019 when the court delivered a ruling in the matter. In view of this, the suit stands dismissed for want of prosecution under the provisions of the law. The Respondent therefore holds that the application cannot thus be entertained by the court.

Analysis and Determination

6. Having read through and considered the Notice of Motion application dated 26th May, 2023, the supporting Affidavit and the Grounds of opposition together with the submissions filed by the parties, the court finds the main issue for consideration being whether the application has merit to warrant the grant of the orders sought.
7. The court is alive to the provisions of Order 17 (2) of the Civil Procedure Rules which deals with Notice to Show Cause why suit should not be dismissed. Order 17 Rule 2 of the Principle Rules was amended by introducing Sub rules (5) and (6) to the effect that suits stand automatically dismissed after two years of inactivity where no step had been taken by either party, in particular Order 17 rule 2(5) of the Civil Procedure Rules provides that:-

“A suit stands dismissed after two years where no step has been undertaken.”

8. From this provision, it is clear that parties are required to take an active step in litigation of a suit so as to achieve the overriding objectives of the *Civil Procedure Act*. This was the position stated in the case of Chairman Board of Trustees Ndalu Mosque & Aanother –vs- Martin Mabele & Others 2018 eKLR, where the court held:-

“Parties must be warned that Courts have now taken charge of the proceedings and will no longer take a laid back approach to litigation but will ensure that the overriding objective of the *Civil Procedure Act* and Rules are strictly adhered to so that matters are heard and determined expeditiously.”



9. Upon perusing the record in this case, the court notes that after the ruling was delivered on 24th October, 2019, the next proceeding recorded was on 22nd June, 2023 when the present application was filed in court. The court therefore agrees with the Respondent's contention that this sit as it is was dismissed by operation of law since more than two years have lapsed since the last action was taken in the matter, and the suit is therefore no longer in existence.
10. In view of this finding, the Court finds that it will be a academic exercise to address the merits of the application herein. Therefore, this application is dismissed with costs to the Respondent.

It is so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 20TH DAY OF SEPTEMBER, 2024.

D.O CHEPKWONY

JUDGE

In the presence of:

Mr. Tumu counsel for Plaintiff/Applicant

Mr. Mutua counsel for 1st and 2nd Respondent

Court Assistant - Martin

