



**Harrogate Limited v Hedges & another (Civil Suit 229 of 2016)
[2024] KEHC 11919 (KLR) (Commercial and Tax) (4 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 11919 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL SUIT 229 OF 2016
FG MUGAMBI, J
OCTOBER 4, 2024**

BETWEEN

HARROGATE LIMITED PLAINTIFF

AND

RICHARD JOHN HEDGES 1ST DEFENDANT

DIANA HOLLY LOUISE HEDGES 2ND DEFENDANT

RULING

Introduction and Background

1. For determination is the plaintiff’s Notice of Motion application dated 20/5/2024 filed pursuant to section 3A of the *Civil Procedure Act* and Order 51 of the *Civil Procedure Rules*. The applicant seeks to have its case which was dismissed on 17/5/2024 reinstated.
2. The plaintiff contends that its advocate took over this suit from Njiru Boniface & Co. Advocates after Mr. Boniface Njiru, the proprietor of the said law firm died in August 2023 and that the court dismissed the plaintiff’s case in the absence of its advocate on 17/5/2024. The plaintiff contends that the non-attendance by counsel during the Notice to Show Cause before this court was not intentional.
3. The plaintiff’s case is that on 17/5/2024, its counsel logged into Mabeya J’s virtual court as per the cause list downloaded on 16/5/2024, which showed that the matter had been listed before Mabeya, J. Through its counsel the plaintiff contends that it was not aware that the matter had been listed before this court and that by the time counsel logged into this court virtually, he was informed that the matter had already been dealt with and the suit had been dismissed in his absence.



4. The application is opposed by the defendants through a replying affidavit sworn on 10/6/2024 by Moses Githua Kamau, the counsel representing the beneficiaries of the estates of the 1st and 2nd defendants.
5. He avers that the plaintiff engaged in an illegality by forging the payment receipt for filing of its pleadings and it is now seeking to have the court sanctify an illegality by requesting this court to reinstate this suit in which it forged illegal receipts to file its pleadings.
6. That the Registrar had informed the plaintiff way back on 8/3/2019 through its counsel on record at the time, about the illegal and forged receipt for the sum of Kshs.71,920/=. The court had directed the plaintiff's counsel to regularize the situation by ensuring the payment of filing fees of Kshs.71,920/= afresh.
7. According to the defendants, the plaintiff had failed to regularize this position prompting the court to issue a notice to show cause why this suit should not be dismissed. The notice to show cause was heard before this court on behalf of Mabeya J who was not sitting and that the court had informed all parties concerned with matters before Mabeya J of his absence and that the matters would be listed before this court instead.
8. The defendant's counsel averred that the plaintiff is dishonest in its application by not only failing to pay the requisite fees to this court but by further forging a filing receipt and therefore the plaintiff is undeserving of the remedy it seeks in this application.
9. In rebuttal, the plaintiff filed a further affidavit sworn on 21/6/2024 by the plaintiff's advocate. He averred that his law firm was appointed by the Law Society of Kenya on 21/8/2023 to manage the affairs of the late advocate Njiru Boniface who was the advocate previously on record in this suit. That upon taking up the deceased advocate's matters, he was not aware that the court filing fees ought to have been paid in this particular matter and that there was no notice or letter in the office file that addressed the issue of non-payment of filing fees.
10. The plaintiff's advocate further averred that the plaintiff is willing to pay the court filing fees in this suit as soon as he is ordered to do so and he apologized to the court for the non-payment of court fees by the late Njiru Boniface, Advocate. Further, it was averred that before this suit was dismissed, the parties had fixed, by consent, a mention on 27/5/2024, before Mabeya J for the purpose of recording a settlement.

Analysis and determination:

11. The application was canvassed by way of written submissions which I have considered alongside the pleadings and evidence placed on record by both parties.
12. It is evident that at the time when the Deputy Registrar of this court informed the plaintiff's advocate on 8/3/2019, that the receipt issued for the sum Kshs.71,920 by the plaintiff was fake, the present firm of advocates had not yet taken over the matter. The Deputy Registrar directed the plaintiff to regularize its pleadings by payment of the requisite court fees. This was not done, leading to the issuance of the notice to show cause why the suit should not be dismissed.
13. While I completely agree with the defendants that the court should not be seen to be abetting in an illegality such as this, it is not clear whether the client was aware of its counsel's unprofessional behavior or whether they abetted the same. At least nothing has been presented before this court to intimate the same. It is not uncontroverted that the present advocates took over this matter after 21/8/2023.
14. The letter from the Law Society of Kenya confirming this fact is produced as 'LMM-1' in the affidavit of the plaintiff's advocate. On the issue of the integrity of the court documents, it is plausible that the



plaintiff's current advocate, when taking over the affairs of the deceased, was not aware of the directions to pay the requisite court fees in order to keep the suit alive.

15. Regarding the notice to show cause, it is not in dispute that the hearing of the same was held on 17/5/2024 before this court on behalf of Mabeya J who was indisposed. It would appear from the evidence presented before this court that both parties relied on different cause lists. I have seen the cause list in which this matter was listed before Mabeya J as well as the cause list which indicated that the matter would proceed before this court owing to the Learned Judge's indisposition. Both are official court documents and the counsel for the applicant cannot be faulted for relying on the document that he did.
16. I also note that the instant application to reinstate the suit was filed in a timely manner within 3 days of its dismissal.
17. Order 17, rule 2(2) of the [Civil Procedure Rules](#) donates wide discretion to this court and provides that:

“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.”
18. Having considered the above, I find that the plaintiff has illustrated sufficient grounds to warrant the reinstatement of this suit provided that the requisite court fees are paid within 7 days of this ruling failure to which the suit will stand dismissed.

DATED, SIGNED AND DELIVERED IN NAIROBI THIS 4TH DAY OF OCTOBER 2024.

F. MUGAMBI

JUDGE

