



Hortion (Suing as the Legal Representative of Julian Michael Horton and Fiona Margaret Horton (Both Deceased) v Jubilee Jumbo Hardware Limited (Civil Suit 663 of 2009) [2023] KEHC 603 (KLR) (Civ) (9 February 2023) (Ruling)

Neutral citation: [2023] KEHC 603 (KLR)

REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CIVIL
CIVIL SUIT 663 OF 2009
JN MULWA, J
FEBRUARY 9, 2023

BETWEEN

JESSICA EMMA – LEE HORTION (SUING AS THE LEGAL REPRESENTATIVE OF JULIAN MICHAEL HORTON AND FIONA MARGARET HORTON (BOTH DECEASED) APPLICANT

AND

JUBILEE JUMBO HARDWARE LIMITED RESPONDENT

RULING

1. Before the court is an application dated July 1, 2022 brought by the Plaintiff under provisions of Sections 1A, 1B, 3A, 63E and 95 of the [Civil Procedure Act](#) as well as Article 159 (2) (d) of the [Constitution](#).

The Applicant seeks orders that the Honourable Court be pleased to extend/enlarge time for filing pleadings, which pleadings are stated as contained in a list of documents dated and filed in court, and served on the Defendant/Respondent on the 9th of May 2022, upon the order being granted, the said documents be deemed to be properly on record.

2. Grounds for the application are stated at the face of the application and further supported by an affidavit sworn on the 1st of July 2022 by one Innocent Mageto an Advocate in the firm of Kimano Kuria and Company Advocates having conduct of the suit on behalf of the Applicant/Plaintiff.

In opposition to the application, Felix Momanyi an advocate instructed by the firm of Jackson Omwenga & Company Advocates for the Respondent filed a Replying Affidavit sworn on the 13th of July 2022.



3. In their arguments before the Court, the parties' Advocates relied on the affidavits for and in opposition of the application. I have considered the same as well as the grounds for the application, and the statutory underpinnings in respect thereof.
4. This suit was filed by a plaint dated November 11, 2009 before the Civil Procedure Rules 2010 came into effect in 2010. Order 4 Rule 1(2) provides that a plaint should be accompanied by an affidavit. That was duly complied with.
5. In addition to the verifying affidavit, a plaint ought to be accompanied by documents and statements signed by witnesses excluding expert witnesses that the Plaintiff wishes to rely on during the trial, provided that statements with leave of court may be furnished at least fifteen days prior to the trial conference under Order 11 of the Civil Procedure Rules.
6. I have considered the Plaintiff's documents sought to be deemed as properly filed in court. They are: copies of Grant of letters of Administration ad litem, Police abstract, and copy of motor vehicle records. The Applicant avers and states that these documents are crucial and necessary in sustaining a fatal accident claim, and also would help the court in determining the real question in controversy between the parties.
7. The said documents were filed and served albeit out of time. The Plaintiff's Advocates admit their mistake in filing the documents out of time and without leave of court. While not objecting to the application per se, the Respondent by its Replying Affidavit urges that to allow the documents to be deemed as properly filed, would be to confer locus standi upon the Plaintiffs who filed the suit without, in particular, the Letters of Administration *Ad Litem* and the other documents.
8. I have considered that the suit has been at the court registry shelves for 13 years. The delay is without a doubt prejudicial to the Defendants interests and rights to have a suit filed and disposed off expeditiously.
9. Sections 1A, 1B, and 3A of the Civil Procedure Act provides for the overriding objective of the Act; to facilitate the just, expeditious, proportionate and affordable resolution of civil disputes, and a party to the suit is mandated to assist the court to achieve the objectives. The admittedly inordinate delay in disposing off the suit is not in line with the objectives under the Act.
10. Article 159(2) (d) of the Constitution however provides that: justice shall be administered without undue regard to procedural technicalities.

The question that arises therefore is whether the objectives stated at Sections 1A,1B and 3A can be met, and Justice be seen to be done by denial of the orders sought by the Applicant.
11. It is trite that Article 159(2) (d) of the Constitution is not meant to cure all shortcomings, omissions and commissions by parties and/or their clients. In the case Equity Group Holdings Limited Vs Commissioner of Domestic Taxes & other, (2021) eKLR, the court held that a procedural technicality that may hinder the court from doing substantive justice, ought to be disregarded in favour of upholding substantive justice, and when applying and interpreting substantive provisions of the law.
12. The issue raised by the Respondent/Defendant in its replying affidavit that the Plaintiff had no locus and capacity to institute this suit and therefore it is a nullity and void ab initial is a matter not before the court by the instant application. On this, this court is guided by the orders of my sister Judge, Hon Maureen Odero J when on the 3rd of March 2022 a grant of representation ad litem was issued to Julian Michael "A" Court Horton who died in Australia on December 10, 2006 until further representation to the Plaintiff herein.



13. For the above reasons, I find and hold that the Plaintiff's application dated July 1, 2022 is merited and is hereby allowed in terms of prayer number (2). Following therefore, the plaintiff's further documents stated in the list of documents dated, filed and served upon the Defendant on the 9th of May 2022 are deemed as properly filed and on record.

14. However, the Plaintiff shall pay costs of this application to the Defendant assessed at Kshs 5,000/- within 45 days of this order/ruling.

Further, the plaintiff is directed to cause the suit to be fixed down for pre-trial conference and directions under provisions of Order 11 of the Civil Procedure Rules within 45 days of this ruling to facilitate fast progression of the suit.

15 Orders accordingly.

DELIVERED DATED AND SIGNED AT NAIROBI THIS 9TH DAY OF FEBRUARY 2023.

J. N. MULWA

JUDGE

