



Prudential Building Society (In Liquidation) v Gathinji & another (Commercial Case 182 of 2015) [2023] KEHC 1192 (KLR) (Commercial and Tax) (14 February 2023) (Ruling)

Neutral citation: [2023] KEHC 1192 (KLR)

REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL CASE 182 OF 2015
DO CHEPKWONY, J
FEBRUARY 14, 2023

BETWEEN

PRUDENTIAL BUILDING SOCIETY (IN LIQUIDATION) PLAINTIFF

AND

NDUNG’U GATHINJI 1ST DEFENDANT

LAWRENCE NGAMAU 2ND DEFENDANT

RULING

1. This matter came up for mention on October 27, 2022 for parties to confirm filing of submissions. The Respondents’ counsel confirmed to court that they had filed their submission on April 25, 2022 and the matter was set down for Ruling on February 10, 2023 with regard to the Notice of Motion application filed by the Applicant, in which they are seeking orders for inter alia Stay of Proceedings herein and setting aside of the court’s proceedings of March 12, 2020.
2. The application was opposed by the Respondent *vide* a Replying Affidavit sworn on September 23, 2021. The gist of the Respondents’ response is that the Applicant has demonstrated indolence in having the matter, and in this case the application prosecutor. It is quite evident from the record that the Applicant has not attended court since October 5, 2021 nor complied with court’s directions with regard to filing and serving of written submissions, to the extent that the Respondents had to file theirs notwithstanding their not being served with the Applicant’s submissions.
3. Apart from being guided by the overriding objective as provided for under Articles 47(1) and 159(2) (a) and (b) of the Constitution and Sections 1A, 1B and 3A of the Civil Procedure Act, for expeditious dispensation of justice in an effective, efficient, equitable and proportionate manner, the court has discretion to always weigh the scales of justice and opt for the lower risk of injustice (See the case



of *Re: Estate of Phillip Nthenge Mukonyo- Deceased*, Machakos Succession Cause No 193 of 2002 [2018]eKLR).

4. It is clear from the Applicant's conduct that the reasons advanced for their failure to attend court or file the present application on time have not been aided by his failure to file their respective submission and attendance of court proceedings.
5. I therefore proceed and dismiss the Notice of Motion application dated June 3, 2021 with costs to the Respondents.

It is so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 14TH DAY OF FEBRUARY, 2023.

D. O. CHEPKWONY

JUDGE

In the presence of:

Mrs. Florence Mwangangi counsel for Defendants

No appearance for and by Plaintiff

Court Assistant - Sakina

