



REPUBLIC OF KENYA



**Kampala Coach Ltd v Cms Motor Group Ltd & another (Civil Case  
28 of 2014) [2023] KEHC 3168 (KLR) (17 April 2023) (Ruling)**

Neutral citation: [2023] KEHC 3168 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
CIVIL CASE 28 OF 2014  
RN NYAKUNDI, J  
APRIL 17, 2023**

**BETWEEN**

**KAMPALA COACH LTD ..... PLAINTIFF**

**AND**

**CMS MOTOR GROUP LTD ..... 1<sup>ST</sup> DEFENDANT**

**PANAFRICA COACHES LIMITED ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. The plaintiff initiated a claim by way of a plaint dated September 23, 2014 against the defendant jointly and severally seeking the following orders:-
2.
  - a) Declaratory orders in terms of paragraph 16(a) and (b) above.
  - b) A restitution order for the suit motor vehicle in favour of the plaintiff and consequential orders for mandatory injunction. In the alternative, an order for compensation in respect of the motor vehicle at their market value.
  - c) Damages for loss of user
  - d) General and aggravated damages
  - e) An order for taking of accounts
  - f) Costs and interest
3. Apparently from the record the suit has remained in limbo since the 2014 save for few interlocutory applications. On June 3, 2021 the 1<sup>st</sup> Defendant pursuant to Order 17 Rule 2(3) of the [Civil Procedure Rules](#) and Section 1A 1B and 3A of the [Civil Procedure Act](#) and all other enabling provisions of the



law. It is not in dispute that Order 17 (2) (3) of the CPR is in respect of dismissal of suits where there has been inordinate delay in scheduling the matter for hearing by either of the parties. In this regard learned counsel for the 1<sup>st</sup> Defendant addressed me on this issue where he was also joined that the 2<sup>nd</sup> Defendant that they are aggrieved with non prosecution of the suit by the plaintiff since the filing of the claim way back in 2014. The inherent power of the court under Section 1A, 1B and 3A of the Civil Procedure Act aids order 17 Rule 2 (3) to exercise discretion for the interest of justice to deal with claims filed by Plaintiffs without taking any step for a period of more than one year. In deciding this application I am guided by the principles in the following cases:

“In Invesco Assurance Co Ltd v Oyange Barracks [2018] eKLR , regarding the of discretion, the court stated: “Nonetheless, Article 159 of the Constitution and Order 17 Rule 2(3) gives the court the discretion to dismiss the suit where no action has been taken for one year and on application by a party as justice delayed without explanation is justice denied and delay defeats equity. That discretion must be exercised on the basis that it is in the interest of justice regard being had to whether the party instituting the suit has lost interest in it, or whether the delay in prosecuting the suit is inordinate, unreasonable, inexcusable, and is likely to cause serious prejudice to the defendant on account of that delay. This is what the case of Ivita v Kyumbu [1984] KLR 441 espoused that:

The test applied by the courts in the application for dismissal of a suit for want of prosecution is whether the delay is prolonged and inexcusable, and if it is, whether justice can be done despite the delay.” ( See also in Invesco assurance Co Ltd v Oyange Barrack [2018] eKLR.

4. Given the background of this litigation there is inordinate delay by the plaintiff which is hazardous and prejudicial with the defendants which remains in excusable. The court in this matter went as far as ordering for substituted service by way of newspaper advertisement to trigger an action by the Plaintiff but no such step has been forthcoming to prosecute the claim against the defendant. The issues of law and facts when applied to the above principles lean towards dismissal of the suit for want of prosecution. The upshot of its all is that the Notice of Motion dated June 3, 2021 be and is hereby dismissed for want of prosecution with costs to the Defendants.

**DATED and DELIVERED AT ELDORET THIS 17<sup>TH</sup> DAY OF APRIL 2023**

**In the presence of**

**Matekwa holding brief for Mwinamo for the 2<sup>nd</sup> Defendant**

**Wafula for Wamwoyo for 1<sup>st</sup> Defendant**

.....

**R. NYAKUNDI**

**JUDGE**

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