



PA (Suing as mother and next of friend TO) v PCEA Kikuyu Orthopedics Rehabilitation Centre (aka PCEA Kikuyu Hospital) & another (Civil Case 407 of 2010) [2023] KEHC 19112 (KLR) (Civ) (21 June 2023) (Ruling)

Neutral citation: [2023] KEHC 19112 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL CASE 407 OF 2010

AN ONGERI, J

JUNE 21, 2023

BETWEEN

PA (SUING AS MOTHER AND NEXT OF FRIEND TO) PLAINTIFF

AND

PCEA KIKUYU ORTHOPEDICS REHABILITATION CENTRE (AKA PCEA KIKUYU HOSPITAL) 1ST DEFENDANT

JOHN KING'ORI 2ND DEFENDANT

RULING

1. The application coming for consideration is the notice of motion dated 27/10/2022 seeking reinstatement of this suit which was dismissed on 13/10/2022.
2. The application is dated 27/10/2022 and is supported by the affidavit of Phoebe Atieno of even date. In she deponed that in 2019 she was misled by her friends that her advocate was not doing anything to finish the case herein and as a result she took her file away. She went through the file and found that she had been misled but before she could return the file to the said advocate the country was hit by covid restriction and therefore she was stuck at home in Karachuonyo in South Nyanza.
3. The respondent filed a relying affidavit sworn by C. K. Kiplagat which is undated which states that on 5/8/2010, the plaintiff herein was granted leave to sue as a pauper but did not take any steps to prosecute the suit and the same was dismissed on 24/5/2019.
4. On 26/9/2019, the dismissal order was set aside and the plaintiff was granted a chance to prosecute the case and the same was fixed for hearing on 2/04/2020 but during the time of service, the hearing was marked with a note that the plaintiff had withdrawn instructions.



5. The respondent did not wish to file any submissions in the application dated 27/10/2022.
6. The applicant submitted that the application is not opposed because the parties to the suit are 3 and none of the defendants have authorized C.K Kiplagat to respond to their application. That for one to oppose an application one must be a respondent and C.K Kiplagat is not a respondent in this matter and thus he cannot oppose their application.
7. It was argued that the main principle that a court should apply in deciding whether to reinstate a suit whether or not the plaintiff stands to suffer prejudice as opposed to that which the defendant shall suffer.
8. The sole issue for determination is whether the plaintiff's suit should be reinstated for hearing.
9. Upon perusal of the file, I find that the plaintiff's counsel was in court on 13/10/2022 when the case was dismissed for want of prosecution.
10. The plaintiff's counsel told the court that the parties were trying to settle the matter but at some point the plaintiff took the file away.
11. The respondents did not deny that the parties were involved in negotiations with a view to settling this case out of court.
12. The plaintiff was suing as mother and next friend of Teddy Odhiambo who was a minor at the time the suit was filed.
13. The constitution of Kenya 2010 mandates every institution, individual, court or Tribunal to act in the best interest of the child.
14. I find that it is in the interest of justice that the plaintiff be granted one more chance to proceed with this case.
15. Since the parties were involved in negotiations with a view of settling this case, I find that this case is suitable for court annexed mediation.
16. I reinstate the suit and I refer the same to court annexed mediation registry for screening and for purposes of being placed before the court annexed mediator.
17. The application dated 27/10/2022 is accordingly allowed in the following terms;
 - i. That the file be referred to the court annexed mediation registry for screening and for purposes of being placed before the court annexed mediator.
 - ii. That in the unlikely event that the case is not resolved by the court annexed mediator the file will be brought back for a hearing date (in any case not more than 60 days from this date).

DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 21ST DAY OF JUNE, 2023.

.....

A. N. ONGERI

JUDGE

In the presence of:

..... for the Plaintiff



..... for the 1st Defendant

..... for the 2nd Defendant

