



Kihiu v County Government of Kiambu & another (Judicial Review E011 of 2022) [2024] KEHC 14508 (KLR) (11 November 2024) (Ruling)

Neutral citation: [2024] KEHC 14508 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
JUDICIAL REVIEW E011 OF 2022
DO CHEPKWONY, J
NOVEMBER 11, 2024**

BETWEEN

THERESIAH NJERI KIHU APPLICANT

AND

COUNTY GOVERNMENT OF KIAMBU 1ST RESPONDENT

RUIRU LAW COURTS 2ND RESPONDENT

RULING

1. The court issued Notice to Show Cause dated 27th February, 2024 for parties to show cause why the matter should not be dismissed for want of prosecution. The Notice to Show Cause was issued after the court established that there had been no activity on the file since the institution of the matter vide a Notice of Motion application dated 21st October, 2022. The matter was fixed for mention on 28th September, 2023.
2. When the matter came up for mention on 28th September, 2023, Counsel for the Applicant informed the court that he had just been instructed to come on record and he needed time to go through the matter before he could take directions on way forward. The court directed the Counsel to serve the Respondent with all the necessary pleadings. Filed on 25th October, 2022. The matter was then fixed for mention on 23rd October, 2023. Again, neither party nor their respective counsel attended court on this day and even on 5th February, 2024, when it was mentioned before the Deputy Registrar of this court.
3. The court reconvened on 13th May, 2024 for mention for parties to show cause why the suit cannot be dismissed for want of prosecution. On their part, Counsel for the Applicant submitted that the failure to attend court was as a result of misdiarisation of the date by their firm and apologised for the same. He submitted that he was instructed to pursue the matter until its conclusion and was willing to execute the instructions unlike the other firm which had neglected and abandoned their legal representation.



He pleaded with the court not to visit the mistake of the other counsel upon the Applicant and her new counsel.

4. The court notes that the case was filed on 21st October, 2022 vide a Chamber Summons application dated on even date under Certificate of Urgency when placed before the court on 21st October, 2022, the matter was not certified as urgent. Since then. No action has been taken in the matter until 13th February, 2023 but none of the parties appeared. A subsequent date was set for 19th April, 2023 but the trial court was on leave. On 19th June, 2023 there was also no appearance. Owing to the above, on 24th July, 2023, the court issued a Notice to Show Cause why the suit should not be dismissed for want of prosecution.
5. The court has considered the sentiments by the Applicant's Counsel and finds that the allegations of mis-diarisation are not substantial considering that the case was filed back in 2022 and no step has been taken to have the same prosecuted. In all the dates fixed by court, the Applicant, together with her counsel had a duty to follow up on the matter in court so as to fast track the hearing and the conclusion of the case. Consequently, this court is not persuaded that a proper cause has been shown as to why the suit should not be dismissed.
6. However, given that it is in the spirit of this court's overriding objective to sustain and determine suits on their merit rather than dismissing them, the court is inclined to allow the Applicant one more chance to pursue her claim so as to avoid throwing and completely locking her out of the seat of justice. The reason for this is that the Applicant, through her new counsel has expressed the interest to further prosecute the case and given that the Respondent has not demonstrated what prejudice they might suffer if the Applicant is accorded another chance.
7. In the resulting, the Notice to Show Cause dated 27th February, 2024 be and is hereby set aside.
8. Mention on 26th November, 2024 for directions.

It is so ordered.

**RULING DATED AND SIGNED AT KIAMBU THIS 11TH DAY OF NOVEMBER, 2024.
(UPLOADED VIA ELECTRONIC MAIL)**

D. O. CHEPKWONY

JUDGE

