Muthama v Muthama (Civil Suit 25 of 2002)
[2025] KEHC 13639 (KLR) (Family) (2 October 2025) (Ruling)

Neutral citation: [2025] KEHC 13639 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)

FAMILY

CIVIL SUIT 25 OF 2002

HK CHEMITEI, J

OCTOBER 2, 2025

BETWEEN

NINA MARIA WANJIKU MUTHAMA .... APPLICANT

AND

JOHNSON NDUYA MUTHAMA .... RESPONDENT

RULING

1. This ruling relates to the applications dated 22nd July, 2024 and 31st July, 2024.
2. The application dated 22nd July, 2024 filed by the Applicant, Nina Maria Wanjiku Muthama seeks for orders that:-
    1. Spent.
    2. This honourable court do grant leave to the Applicant to file witness statements and documents out of time and the filed bundle of documents and witness statements be deemed to have been duly filed.
    3. Costs for this application be in the cause.
3. The application is based on the grounds thereof and supported by her affidavit sworn on 22nd July, 2024.
4. She avers inter alia that she had planned to file a bundle of documents together with witness statements. These materials were handed over to her former advocates, CM Advocates LLP, who have since informed her that both the documents and the entire file were misplaced and never filed in court. Consequently, the witness statements and supporting documents remain unfiled. In the interest of

justice, she now seeks leave to file the witness statements and documents so that the court can determine the substantive issues in this matter.

5. The application is opposed vide replying affidavit sworn by Johnson Nduya Muthama on 31st July, 2024 who deponed inter alia that the Applicant's affidavit is fatally defective and cannot validly support the present application.

6. He deponed that the Applicant instituted this suit twenty-two years ago but has taken no meaningful steps to prosecute it to conclusion. Her prolonged inaction amounts to laches and disentitles her to any further indulgence of this Honourable Court, particularly in view of the prejudice her inordinate delay continues to cause the Respondent.

7. It is a settled principle that justice delayed is justice denied and that a court of equity will not assist an indolent litigant such as the Applicant. On 25th May, 2023 - after more than two decades of inactivity - the matter was certified ready for hearing in the presence of the plaintiff's advocate, following her own confirmation that all documents and witness statements intended for reliance at trial had been filed. On the same date, and again in the presence of both parties, the court fixed the hearing for 12th October, 2023 on a priority basis given the age of the suit and the court's resolve to bring it to a close. However, when the case came up on 12th October, 2023, the Applicant was unprepared and sought an adjournment, citing among other reasons her recent engagement of a new law firm.

8. He went on to state that the record demonstrates that most adjournment requests have been at her behest and that she has repeatedly changed advocates instead of prosecuting the claim to finality. The reliefs sought invoke the court's discretionary and equitable jurisdiction, and the Applicant bears the burden of offering credible explanations both for her extraordinary delay over the past twenty-two years and for her failure to present any additional evidence or witnesses before 25th May, 2023 when the case was certified ready for hearing.

9. Having willingly participated in the directions issued on that date, she cannot now approbate and reprobate. Established legal doctrine bars a litigant from adopting inconsistent positions to the prejudice of the opposing party, yet that is precisely what the Applicant attempts through the present application.

Analysis and Determination

10. Having read the record herein and the history of this case I find that the application has been brought too late in the day. The delay of over 20 years is extremely inordinate delay to say the least.

11. The Applicant has sought to lay blame on her erstwhile lawyers without any prove. There is no evidence that the file was lost or misplaced. There is no supporting affidavit least of all from the said firm or any authoritative person to back up her claim.

12. Worst of all and as clearly deponed by the Respondent the application has been brought after several adjournments by the Applicant. The changing of counsels three times midstream although it is her right does not mean that she must delay the hearing and determination of the matter.

13. All is not lost that the suit was brought by her and I suppose she was well armed with all the relevant arsenals before filing the same.

14. As was said in Moschino vs Mwangi [2023] KEEELC 17144 (KLR)

> " The provisions of Order 3 Rule 2 of the Civil Procedure Rules require claimants to fil their suits accompanied by written statements. This court had however overlooked this proviso

and had given the plaintiff several opportunities to file and serve the requisite documents in readiness for trial. I find that the failure to file witness statements for the last 5 years is not a mere technical infraction. Rather it is an issue which goes to the root of the dispute and adversely affects the entire system of the administration of justice. The right to be heard is sacrosanct and is embodied in the Latin maxim "audi alteram partem." However, a party is only entitled to reasonable opportunity to be heard, See Nginyanga Kavole vs Mailu Gideon (2019) eKLR. The instant case appears to be one of mere inaction which is not excusable. Thus, this is a situation whereby the plaintiff has driven herself from the seat of justice."

15. Consequently, I do not find merit in the application and it is disallowed.

16. The application dated 31st July, 2024 filed by the Applicant, Johnson Nduya Muthama seeks for orders that:-

    1. Spent.

    2. This honourable court be pleased to strike out the plaint dated 18th December, 2002.

    3. Costs for this application be in the cause.

17. The application is based on the grounds thereof and supported by his affidavit sworn on 31st July, 2024.

18. He avers inter alia that on 7th September, 2018, the Respondent was served with a request for particulars dated 24th August, 2018, which her former advocates formally acknowledged by affixing their official stamp. On 31st October, 2019, she sought and obtained leave of this Honourable Court to file the requested particulars within 30 days. That period expired over 4 years ago, yet she has failed to comply with the court's directive.

19. The Respondent is therefore in contempt of the said order. The withheld particulars are critical to ensuring a fair hearing as guaranteed under Article 50 of *the Constitution*. Given her continued default in obeying an explicit court order, the Plaintiff's plaint ought to be struck out with costs.

20. The application is opposed vide replying affidavit sworn by the Respondent on 15th September, 2024 who avers inter alia that the present application amounts to an abuse of the court process as it is intended only to delay the prompt determination of this case. It is the Applicant herself who filed all the affidavits and documents before this court, and the signatures on record are her own. The application dated 22nd July, 2024 was likewise filed by her and does not in any way constitute an abuse of process, as it merely seeks leave to file her documents out of time. When lodging the application dated 22nd July, 2025, her advocates attached only a list of documents and witnesses because the actual documents and statements are too voluminous to be annexed in their entirety. The present application is therefore prejudicial to her, as it aims to deny her the right to place evidence before the court, and it should accordingly be dismissed with costs.

21. The Respondent has filed written submissions dated 30th February, 2025.

22. The Applicant has filed written submissions dated 28th March, 2025 and 31st March, 2025 placing reliance among others on the following:

    a. Ongeri vs Skytop Technologies Ltd (2019) eKLR where the court stated as follows: "This rule empowers the court to permit the introduction of additional documents onto the court record even after the pre – trial conference stage. In exercising this power at this preliminary stage, the court is not, in my humble view, concerned with the evidential value of the documents that are sought to be introduced. This is a matter that is best left to the trial process. All that the court needs is to consider at this stage, is the relevance of the documents to the dispute, thee

reason for the delayed filing of the documents and the possible prejudice that the opponent may suffer as a result of an order permitting introduction of the documents and whether the prejudice can be remedied in some way."

b. Isiolo Stage View Enterprises vs Isiolo County Government & 2 others [2018] eKLR where the court sated that: "Time standards help courts to closely manage and monitor the processing of case from filing to conclusion. Further, time standards set defined targets for the completion of key process steps and events, establish overall goals that judges and lawyers must meet, create the expectation of what constitutes timelines, and are essential to eliminating and avoiding case backlogs. The standards reflect a commitment by the courts to complete cases promptly, and also reflect what court users regard as a reasonable time for resolution of cases. The net effect of non – compliance with the set timelines is delay, creation of backlog, more acrimony and even confusion."

Analysis and Determination

23. I have carefully considered the application, the responses thereto and the rival submissions filed by the parties.

24. I think in the absence of any reason or inability to comply it is appropriate to state that the Applicant shall not rely on the contested documents. The failure to respond means that the court will simply accept as evidence whatever exhibits are available whether they prejudice the parties case or not.

25. There is no reason why the Respondent has failed to honor the demands to produce the same.

26. Nonetheless the prayer to strike out the plaint is too drastic in the circumstances. The suit in my view can still be determined by what is available on record. Of course, the Applicant is precluded from relying on any documents or evidence which she has failed to produce pursuant to the said orders or notice to produce.

27. Consequently, I do not find merit in the application and shall disallow it.

28. Having stated so it is the observation of this court that this is one of the suits which has lingered in the corridors of justice for close to 23 years now. I do not see any apparent reason for the delay. Both the Applicant and the Respondent ought to have moved and fix the same for hearing unless evidence is shown of reconciliation.

29. In the premises I direct that:-

    (a) The applications dated 22nd July 2024 and 31st July 2024 are hereby dismissed with no order as to costs.

    (b) The matter be fixed for hearing forthwith and no further application shall be filed without the leave of the court.

DATED SIGNED AND DELIVERED VIA VIDEO LINK THIS 2ND DAY OF OCTOBER 2025.

H K CHEMITEI

JUDGE