



**Alpine Coolers Limited v East African Portland Cement Company Limited
(Civil Suit 2148 of 2019) [2023] KEMC 124 (KLR) (16 May 2023) (Ruling)**

Neutral citation: [2023] KEMC 124 (KLR)

**REPUBLIC OF KENYA
IN THE CHIEF MAGISTRATE'S COURT (MILIMANI LAW COURTS)
CIVIL SUIT 2148 OF 2019
JP ADUKE, SRM
MAY 16, 2023**

BETWEEN

ALPINE COOLERS LIMITED PLAINTIFF

AND

EAST AFRICAN PORTLAND CEMENT COMPANY LIMITED DEFENDANT

RULING

1. The Applicant moved this court by way of a Notice of Motion Application dated 27th June 2022 seeking dismissal of the suit for want of prosecution and costs. The same is supported by the affidavit of Simon Peter.
2. Return of Service on record shows that the application was served on the Plaintiff. The Plaintiff filed a response to the said application. The same is before me defended. I have read the submissions by the parties on the record.
3. From the proceedings on record, it is apparent that this matter was instituted on 02nd April 2019. Since then, there was no activity on the file until 09th July 2019, and thereafter on 31st October 2019 when Hon Lewa delivered a ruling in the presence of Plaintiff Counsel and Defence Counsel. From 31st October 2019 (to 21st Sept 2022) there was inactivity on file until 21st Sept 2022 when the present application came up for directions before this court. I have considered the application against the provisions of order 17 rules 2 and 3 of the *Civil Procedure Rules* which provides as follows:

Notice to show cause why suit should not be dismissed [Order 17, rule 2.]

- (1) In any suit in which no application has been made or step taken by either party for one year, the court may give notice in writing to the parties to show cause why the suit should not be dismissed, and if cause is not shown to its satisfaction, may dismiss the suit.



- (2) If cause is shown to the satisfaction of the court it may make such orders as it thinks fit to obtain expeditious hearing of the suit.
 - (3) Any party to the suit may apply for its dismissal as provided in sub-rule 1.
 - (4) The court may dismiss the suit for non-compliance with any direction given under this Order.
4. I have also relied on the reasoning of the court in *Ecobank Ghana Limited vs Triton Petroleum Co Ltd and others* eKLR[2018] and the principles outlined therein, namely: whether or not the delay in prosecuting the suit is inordinate and prolonged, whether or not there is an explanation for such delay, and lastly whether or not the applicant stands to suffer prejudice due to the delay. The file has been dormant for more than 2 years. I find this delay prolonged. I have considered the explanation by the Plaintiff on file, and I find the same insufficient. Courts were operating even during the pandemic period. Litigation must come to an end. From the documents on record, it is apparent that the plaintiff is not desirous of prosecuting this suit to conclusion. In view of the above reasons, I find the said N/M Application dated 27th June 2022 merited and allow the same. Costs to the Applicant. File closed.

ADUKE JEAL PRAXADES ATIENO

SENIOR RESIDENT MAGISTRATE

RULING SIGNED AND DELIVERED THIS 16TH MAY 2023 AT 2PM.

In the presence of :

1. Court Assistant: Mr. Benjamin Kombe
2. Counsel for the Plaintiff:

