



Mediheal Diagnostics & Fertility Centre & 2 others v Legacy Auctioneering Services & another (Civil Cause 19 of 2023) [2025] KEHC 17335 (KLR) (25 November 2025) (Ruling)

Neutral citation: [2025] KEHC 17335 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CIVIL CAUSE 19 OF 2023
RN NYAKUNDI, J
NOVEMBER 25, 2025**

BETWEEN

MEDIHEAL DIAGNOSTICS & FERTILITY CENTRE 1ST PLAINTIFF

SWARUP RANJAN MISHRA 2ND PLAINTIFF

PALLAVI JODHIPUR RAJSTHAN 3RD PLAINTIFF

AND

LEGACY AUCTIONEERING SERVICES 1ST DEFENDANT

CIB KENYA LIMITED 2ND DEFENDANT

RULING

1. The Plaintiffs herein filed a Plaint dated 27th October 2023 seeking for Judgment against the Defendants for:
 - a. A declaration that the 1st Defendant has failed to issue the Plaintiffs with a 45 days' Notice as required under the Auctioneering Rules 1997.
 - b. A Declaration that the 2nd Defendant failed to issue the Plaintiffs with a Statutory Notice required by section 90 (2)(b) of the Land Act No 6 of 2012.
 - c. A declaration that the 2nd Defendant failed to issue the Plaintiffs with a Statutory Notice as required by section 96(2) of the Land Act No 6 of 2012.
 - d. A declaration that the Defendants failed to conduct a forced sale valuation of Land Registration Number Kapsaret/Kapsaret Block 2 (Kaptuiyo)/14 and Plateau/Plateau Block 2 (Uasin Gishu)/37
 - e. A Permanent injunction restraining the Defendants whether by themselves, agents and/or employees from selling, dealing, interfering, alienating or disposing of all that parcel of land



known as Kapsaret/Kapsaret Block 2 (Kaptuiyo)/14 and Plateau/Plateau Block 2 (Uasin Gishu)/37.

- f. Costs of this suit.
2. The 2nd Defendant entered appearance and filed its Statement of Defence dated 7th November 2023 denying the averments of the Plaintiffs and putting them in strict proof thereof. The 2nd Defendant also filed a Counter-Claim dated 7th November 2023 reiterating its entire contents of paragraph 1 to 11 of the Statement of Defense and prayed that the Plaintiffs' suit be dismissed with costs and for judgement against the Plaintiffs for: -
 - a. The sum of kshs. 73,041,458.00
 - b. The sum of USD 903,316.88
 - c. Award costs of the suit and the Counterclaim to the 2nd Defendant.
 - d. Interests on (a) & (b) above at Court rates
 - e. Any other relief that this Honourable Court may deem fit to grant.
 3. This Court has carefully considered the record in respect of the suit commenced by the Plaintiffs through a Plaint dated 27th October 2023, wherein they seek a series of declaratory and injunctive orders against the Defendants arising from alleged non-compliance with statutory and regulatory requirements relating to the intended sale of the properties known as Kapsaret/Kapsaret Block 2 (Kaptuiyo)/14 and Plateau/Plateau Block 2 (UASIN GISHU)/37. It is against this background that the Court now turns to consider the subsequent conduct of the parties particularly the Plaintiffs' failure to prosecute their claim despite several opportunities and repeated mentions leading to the present question of whether the suit should be dismissed for want of prosecution.
 4. A court's authority to dismiss a suit for want of prosecution is a discretionary one. As with any judicial discretion, it must be exercised prudently and in line with established legal principles, taking into account the unique facts and circumstances of each matter. This discretion must be applied fairly, not arbitrarily or impulsively. There are no rigid rules governing how the court should apply its inherent power when deciding whether to dismiss a suit for want of prosecution. However, extensive case law provides guiding principles to assist courts in exercising this discretion. Specifically, Order 17 Rule 2 of the Civil Procedure Rules provides for dismissal of a suit for want of prosecution and states as follows: -
 2. 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.
 5. In the case of Wilson Kiarie Njoroge Vs Family Bank Ltd & Another [2015] eKLR, the court stated as follows;

“.... while I note that a plaintiff has a primary duty to take steps to progress its case, the law prohibits impulsive inclination and requires that before making such an order as the one sought herein i.e dismissal of a suit, the court must first satisfy itself that there was inordinate



delay in prosecuting the matter, that the said delay was deliberate and inexcusable and is an abuse of the court process, that the said delay shall occasion prejudice to the other party....”

6. In *Dock Workers Union of Kenya Vs Kenya Ports Authority; Portside Freight Terminals Limited & another (Interested Parties) (Constitutional Petition E006 of 2020) [2022] KEHC 12951 KLR*, Mativo J (as he then was) pronounced himself as follows;

“.... In light of these principles, it is my view that the rules permit a court to dismiss, in appropriate circumstances, an action for want of prosecution. It will constitute a justifiable limitation of a plaintiff’s constitutional right of access to the courts. An intention not to prosecute a suit may reasonably be inferred particularly where there is an inordinate or unreasonable delay in prosecuting the case or application. In order to have the advantage of the courts exercise of discretion, the plaintiff must show that he was prevented by sufficient cause from prosecuting the case. Sufficient cause means something beyond the control of the party. The words “sufficient cause” should be liberally construed. The applicant must satisfy the court that he was not negligent and inactive. It must be considered that when there is a delay in prosecuting a case or the time filing the application or an appeal lapses a valuable right accrues to the successful litigant....”

7. Similarly, in the dictum of *Ivita Vs Kyumba [1984] KLR* the court laid down the test to be applied in dismissing a case for want of prosecution in the following terms;

“.... the test is whether the delay is prolonged and inexcusable, and, if it is, can justice be done despite such delay. Justice is justice to both the plaintiff and defendant; so, both parties to the suit must be considered and the position of the judge too, because it is no easy task for the documents, and, or witnesses may be missing and evidence is weak due to the disappearance of human memory resulting from lapse of time.... Thus, even if delay is prolonged if the court is satisfied with the plaintiff’s excuse for the delay and that justice can still be done to the parties notwithstanding the delay, the action will not be dismissed, but it will be ordered that it be set down for hearing at the earliest available time. Where the defendant satisfies the court that there has been prolonged delay and the plaintiff does not give sufficient reason for the delay, the court will presume that the delay is not only prolonged but it is also inexcusable and in such case the suit may be dismissed.”

8. From the foregoing authorities, it is clear that the most important consideration the court should bear in mind when exercising its discretion of the cases of this nature is whether delay in prosecution of a suit or petition has in fact been established; the length of the delay; whether the delay was inordinate and whether it was inexcusable. The court should also consider whether the defendant or applicant has been prejudiced by the delay or was likely to be prejudiced by any further delay if the application was not allowed. It is important to note that whether or not delay was inordinate will depend on the circumstances of each case but it will be inexcusable if no reasonable excuse or satisfactory explanation is given for the delay.

9. From the record, it is evident that the Plaintiffs have exhibited a consistent pattern of indolence and lack of interest in prosecuting their own matter. The suit came up on 6th August 2025, yet nothing substantive was undertaken. It was again listed for a further mention on 13th October 2025 but similarly no steps were taken to move the matter forward. On 15th October 2025, the situation remained unchanged with no action taken by the Plaintiffs. The case yet again came up on 30th October 2025 for a further mention and still the Plaintiffs failed to prosecute or give any indication of readiness to proceed. What is particularly concerning is that counsel for the Defendants Mr. Orare, has consistently attended



court on all these occasions whereas counsel for the Plaintiffs, Mr. Kangongo, has been largely absent offering no explanation or attempt to progress the suit. This sustained failure to take any meaningful step to prosecute the case amounts to a clear abuse of the court process and undermines the principles of expeditious disposal of cases as required under Article 159(2)(b) of *the Constitution* and Sections 1A and 1B of the *Civil Procedure Act*.

10. The intention behind this rule is to ensure that parties diligently pursue their cases and appear before the court as required. The court's discretion to dismiss the suit can be exercised if the plaintiff fails to provide sufficient cause for non-appearance. However, if valid reasons are presented, the court may set aside the dismissal and proceed with the case.
11. Litigation cannot be allowed to remain in limbo indefinitely at the whim of an uninterested litigant. The Defendants should not be held hostage by a suit in which the Plaintiffs have shown no diligence, commitment or respect for the court's time. The cumulative delay coupled with repeated non-attendance and failure to take steps satisfies the legal threshold for dismissal for want of prosecution. In the circumstances, this Court finds that the Plaintiffs have failed to demonstrate any intention to prosecute their claim and the continued pendency of this suit serves no purpose. After considering the entire record and indeed the totality of the issue as pleaded since 2023, by the plaintiff I believe very strongly that the presence of this suit before this court is in violation of our statutory timelines outlined in the *Civil Procedure Act* and Rules on case management and adjudication as against the defendants.
12. *The constitution* imperative in Article 159 (2) (b) provides as follows; judicial authority is derived from the people and vest in, and shall be exercised by the courts and tribunals established by or under this Constitution. (b) justice shall not be delayed. Denial of justice includes wrong delays, on the part of the judicial authority in giving judgment or inordinate and inexcusable delays on the part of the plaintiff or the defendant in prosecuting their respective claims or counter claims. In the comparative decision in the case of *Barker vs Wingo* (1972) The US supreme court established a four-part test for determining whether a defendant's right to a speedy trial has been violated.
 - i. Length of the delay
 - ii. Reason for the delay
 - iii. Defendant's assertion of their right
 - iv. Prejudice to the defendant

In our very own jurisdiction, the courts have been very emphatic as deducible from *Maclean and another vs Kiago and another*, *Banker Co-operative and another Vs George Arunga Sino* (2010) eKLR. To start with *the constitution* guarantees the right to a fair hearing without unreasonable delay under article 50 (2) (e). The set of factors to guide the courts discretion in such applications like in the instant scenario can be twined up like the guidelines in the persuasive dicta in case of *Barker vs Wingo* (supra) Thus;

- i. The length of the delay – the court will consider how much time has passed since the judgment or order was made.
- ii. The reason for the delay – applicants must provide a plausible and candid explanation for the delay. The court has accepted reasons such as an honest oversight by an advocate or a delay by the court in proving typed proceedings.
- iii. The chances of the appeal succeeding – while not a guarantee, the court may consider the potential merits of the appeal.



- iv. The degree of prejudice to the respondent – the court will weigh the potential harm to the party who won the case if the extension is granted against the prejudice the applicant would suffer if the extension is denied.
- v. The conduct of the parties – the court will examine the overall conduct of the parties during the litigation.

13. Accordingly, the suit herein be and is hereby dismissed for want of prosecution with no orders as to the costs. It is so ordered.

DATED, SIGNED AND DELIVERED VIA CTS AT ELDORET THIS 25TH DAY OF NOVEMBER 2025

.....

R. NYAKUNDI

JUDGE

