

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**COMMERCIAL AND TAX DIVISION**  
**MISCELLANEOUS APPL. NO. E809 OF 2023**

**EVANS** **C.**  
**GORO.....PLAINTIFF/APPLICANT**  
**VERSUS**  
**DELTA SOLAR & POWER SYSTEMS.....1<sup>ST</sup>**  
**DEFENDANT**  
**SHARP ELECTRONICS TECHNOLOGY LIMITED...2<sup>ND</sup>**  
**DEFENDANT**

**RULING**

1. The Plaintiff/Applicant has filed a Notice of Motion dated 25<sup>th</sup> February 2025 seeking for orders that the court set aside the order made on 7<sup>th</sup> November 2024 dismissing the Plaintiff’s application dated 18<sup>th</sup> September 2023 and further that the court reinstate the said application and the Applicant be allowed to file supplementary affidavit and submissions.
2. The application is supported by the grounds on the face of it and the affidavit sworn on 25<sup>th</sup> February 2025 by Winnie Aguti who contends that non-compliance with the directions of the court which led to the dismissal of the application, ought not be visited on the Applicant as it was a mistake by his previous advocates.
3. The Application is opposed through the grounds of opposition dated 28<sup>th</sup> March 2025 and the replying affidavit of Stephen Njihia Mbugua (3<sup>rd</sup> Respondent) sworn on 3<sup>rd</sup> April 2025. It is

contended for the Respondents that the Applicant unnecessarily delayed the prosecution of his application by his non-compliance with the directions of the court as to filing a further affidavit and submissions. That the case belongs to the Applicant and not his Advocates and the instruction of new advocates was only meant to further delay the matter.

4. Parties filed submissions which basically mirrored the arguments in their rival affidavits. I have considered all the material placed before me, including the authorities relied upon respectively by the parties. The issue for determination is whether the Applicant has given plausible reasons to warrant an order of reinstating the dismissed application dated 18<sup>th</sup> September 2023.
5. The jurisdiction to reinstate an application dismissed for want of prosecution is a discretionary one. That discretion is, however, exercised on the basis of well-settled principles. The court in **Shah v Mbogo & Another (1967) EA 116** outlined the following principle on exercise of discretionary jurisdiction:

***“The discretion is intended so as to be exercised to avoid injustice or hardship resulting from inadvertence or excusable mistake or error but is not designed to assist a person who has deliberately sought whether by evasion or otherwise to obstruct or delay the course of justice.”***

6. One of the policy considerations that guide our trial courts when exercising this discretionary jurisdiction is the need for expeditious disposal of cases. In **Mobile Kitale Service Station vs. Mobil Oil Kenya Limited & another [2004] eKLR** the Court held as follows:

***“I must say that the Courts are under a lot of pressure from backlogs and increased litigation, therefore it is in the interest of justice that litigation must be conducted expeditiously and efficiently so that injustice caused by delay would be a thing of the past. Justice would be better served if we dispose matters expeditiously. Therefore, I have no doubt the delay in the expeditious prosecution of this suit is due to the laxity, indifference and/or negligence of the plaintiff. That negligence, indifference and/or laxity should not and cannot be placed at the doorsteps of the defendant. The consequences must be placed on their shoulders.”***

7. The Applicant insists that he did not occasion the failure to file submissions and blames his previous advocates and that he ought not be made to suffer for their mistakes.
8. I am not persuaded by the contention by the Applicant. He has not demonstrated that he made effort to follow up on the case and ensure that his advocates complied with the directions of the Court. My ruling of 7<sup>th</sup> November 2024 when the initial application was dismissed, was comprehensive

enough to show the Applicant's disinterest in prosecuting the application. I do not wish to belabour on the same. The Applicant's conduct is inexcusable and I decline to reinstate the application dated 18<sup>th</sup> September 2023.

9. In the result, I find that the Notice of Motion dated 25<sup>th</sup> February 2025 lacks merit and is dismissed with costs to the Respondents.

**RULING** delivered virtually, dated and signed at **NAIROBI**

This **11<sup>th</sup>** day of **December** 2025.

**P.M. MULWA**  
**JUDGE**

**In the presence of:**

*Ms. Aguti h/b for Mr. Kiongera for 3<sup>rd</sup> Applicant*

*Mr. Karugia for Respondent*

*Court Assistant: Carlos*