



**Kimani v Piccalily International Limited & 2 others (Civil Case E176 of 2019)
[2025] KEHC 18563 (KLR) (Commercial and Tax) (4 December 2025) (Ruling)**

Neutral citation: [2025] KEHC 18563 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL CASE E176 OF 2019
F GIKONYO, J
DECEMBER 4, 2025**

BETWEEN

FREDRICK KIMEMIA KIMANI PLAINTIFF

AND

PICCALILY INTERNATIONAL LIMITED 1ST DEFENDANT

GULF AFRICAN BANK LIMITED 2ND DEFENDANT

**JOSEPH GIKONYO T/A GARAM INVESTMENTS AUCTIONEERS 3RD
DEFENDANT**

RULING

1. Before me is the plaintiff/ applicant's notice of motion dated 5.10.2023 seeking: -
 1. a review of the orders issued by Hon Alfred Mabeya J on the 4.5.2023 dismissing the plaintiff's suit for want of prosecution and all other consequential orders thereto.
 2. Reinstatement of the suit and setting it down for hearing at the earliest available time.
 3. Leave for the law firm of Messrs Bikundo Associates & Co Advocates to come on record for the plaintiff in place of the law firm of Messrs. Mokono Ondieki & Co Advocates.
2. The application is supported by the plaintiff's affidavit sworn on 5.10.2023 and written submissions dated 20.4.2025.
3. The main ground is that the applicant failed to attend court when the matter came up for hearing of the Notice to Show Cause on 4.5.2023 as he was unaware. The applicant stated that this was due to the illness of his erstwhile advocate, Mr. Mokono Ondieki of Messrs Kerosi Ondieki & Co Advocates, from September 2020 and his consequent demise in April 2023.



4. The applicant contended that no prejudice will be occasioned on the respondents whatsoever if the orders sought are granted as they will have the opportunity to be heard in court on the merits of their respective cases.
5. The applicant relied on: -
 1. Gideon Mose Onchwati v Kenya Oil Co. Ltd & another [2017] eKLR
 2. John Nahashon Mwangi v Kenya Finance Bank Limited (in Liquidation) [2015] eKLR
 3. Wachira Karani v Bildad Wachira [2016] eKLR
 4. Bernard Cheruiyot Mutai v Serena Adhiambo Adede [2021] eKLR
6. The 2nd and 3rd defendants/ respondents opposed the application through a replying affidavit sworn by the 2nd defendant's legal officer, Lawi Sato, on 19.4.2024.
7. The core contention is that the suit belongs to the applicant and he was responsible for following up on the case regardless of the challenges faced by his advocate.
8. The respondents provided details that the advocate was admitted in September 2020 but was discharged three months later and was readmitted to hospital in April 2023 before his demise. The respondents faulted the plaintiff for not producing evidence of following up the matter during the three years preceding the dismissal, even during the intervening period when the advocate was not in hospital.
9. The respondents further highlighted that after obtaining interim orders since 22.6.2020, the plaintiff neglected to pursue its case for two years prompting their application dated 22.6.2020 seeking the setting aside of the interim orders and striking out of the suit for want of prosecution.
10. The respondent pointed out that the applicant has neither made efforts to service the loan facility nor presented a settlement proposal. They therefore argued that they stand to be prejudiced if the suit is reinstated.
11. The respondent relied on: -
 1. Ivita v Kyumbu [1984] KLR 441
 2. Shah v Mbogo [1967] EA 116
 3. Kitale Service Station v Mobil Oil Kenya Limited & another [2004] eKLR
 4. Jim Rodgers Gitonga Njeru v Al-Husnain Motors Limited & 2 others [2018] eKLR
 5. Rughani v Fifty Investments Limited and another (Civil Appeal No.80 of 2007) [2016] eKLR
 6. Mohammed Jamaa Ali v Chairman KNUT Garissa Branch and another [2021] eKLR
 7. James Muthama Mwito v China Jiangxi International Kenya Limited [2021] eKLR

Analysis and Determination

12. This is a review application with the outcome of reinstatement of the suit. Are there grounds sufficient to warrant review of the orders of 4.5.2023 and for reinstatement of the suit?



13. The application is brought, inter alia, under Order 12 Rule 7 of the Civil Procedure Rules which provides inter alia, that “Where under this Order...the suit has been dismissed, the court, on application, may set aside or vary the judgment or order upon such terms as may be just.”
14. Review of court decrees or orders under section 80 of the *Civil Procedure Act* may be done upon one or more of the grounds set out in order 45 rule 1 of the Civil Procedure Rules inter alia for sufficient reason.
15. Review of its decisions and to reinstate a suit are discretionary remedy exercised upon principle according to the unique circumstances of a case.
16. The cardinal principle for reinstatement of suit which draws on the principle of substantive justice is ‘...whether the delay is prolonged and inexcusable, and if it is, can justice be done despite such delay’. *Ivita v Kyumbu* [1984] KLR 441.
17. The must however, consider prejudice that may be suffered by either parties if the suit is dismissed or sustained.
18. The circumstances of this case are that the 2nd and 3rd respondents filed an application dated 4.10.2022 seeking, among others, dismissal of the suit for want of prosecution.
19. In the ruling of 24.3.2023, the court directed the issuance of a notice to show cause. On 4.5.2023, the suit was dismissed for want of prosecution after the applicant failed to appear for hearing of notice to show cause.

Is the delay prolonged?

20. The suit was filed on 17.6.2019. The court issued an interim order on 22.6.2020 restraining the 2nd and 3rd respondents from dealing with L. R. NBI/Block 92/221. The 2nd and 3rd respondents applied to set aside the interim orders through a motion dated 4.10.2022. In the ruling of 24.3.2023, the court observed that the interim orders had lapsed. It was noted that: -

“After the orders were granted to the plaintiff on 22.6.2020, no action seems to have been taken. The plaintiff went to slumber. There was only one appearance on 1.10.2020. All subsequent appearances before the Deputy Registrar were given a wide berth. It is true that the plaintiff may have lost interest in the suit after having obtained the subject order.”

21. There was a further delay in filing the subject application on 5.10.2023, about 5 months after the suit was dismissed. The delay was attributed to inability to access the file upon the demise of the erstwhile advocate demise; the landlord had locked his office due to rental arrears dispute.
22. The subject application was first mentioned before the court on 30.4.2024.
23. From the foregoing, the court finds that there was a prolonged delay.

Is the prolonged delay excusable?

24. The applicant argued that it has demonstrated sufficient cause for review and reinstatement of the suit. The reason given for failure to prosecute its case was that his advocate was intermittently unwell since 2020 and eventually passed away in April 2023.
25. The applicant exhibited a letter dated 22.6.2023 from the Office of Director of Clinical Services, Kenyatta University Teaching, Referral Hospital indicating that: -



1. The advocate, Mr. Ondieki was first admitted on 5.9.2020 after he tested positive for COVID-19 infection.
 2. He was managed and treated for three months as an inpatient and later discharged.
 3. He was later admitted with the DX and other complications on 3.4.2023 and later succumbed on 11.4.2023.
 4. Mr. Ondieki was unable to attend to his duties as an advocate because of the ailments and complications that arose from COVID-19 infections.
26. The applicant also exhibited a certificate of death showing that Mr. Ondieki passed away on 11.4.2023.
 27. As noted by the 2nd and 3rd respondents, the advocate was initially admitted in hospital in September 2020 and discharged after three months. Thereafter, he was readmitted in hospital in April 2023.
 28. The above was quite an unfortunate turn of events for the advocate.
 29. I do note that, the respondents argued that it was the applicant's responsibility to follow up the case despite the challenges faced by the advocate.
 30. Indeed, it is the litigant's duty to constantly check with his advocate or the court or court systems on the progress or status of his case. Julius Odhiambo Oduor v Chairman, Secretary, Auditor & Organisers of Nyikwa Ramogi Welfare [2019] KEHC 4110 (KLR)
 31. The applicant did not produce any evidence that he monitored the case by requesting updates from the advocate or from the court. The applicant-and rightly so-followed with profound zeal events befalling the advocate. But, did not employ any attempt to follow up on the progress or status of his case in court. I wish he had done so.
 32. Therefore, the blame falls on the applicant. The court is not convinced that the applicant has given a plausible and satisfactory explanation for the 2-year period of delay before the suit was dismissed for want of prosecution and the delay in filing the present application.

Prejudice

33. The other guideline is that the defendant ought to satisfy the court that he will be prejudiced by the delay or even that the plaintiff will be prejudiced.
34. The applicant argued that there will be no prejudice occasioned on the respondents if the orders sought are granted as they will have the opportunity to be heard in court on the merits.
35. On the other hand, the 2nd and 3rd respondents contended that they stand to be prejudiced if the suit is reinstated as the respondent the applicant has neither made efforts to service the loan facility nor presented a settlement proposal.
36. Article 159 of *the Constitution* requires the court to administer justice without undue regard to procedural technicalities.
37. 'Justice shall be done to all, irrespective of status' (art. 2(a) of *the Constitution*). Justice is to the applicant as well as the respondents.
38. Thus, the court ought to balance the applicant's right to be heard and the principle that 'justice shall not be delayed' (Art. 159 (2) (b) of *the Constitution*). Mboe Sambu Resources Ltd v Paino & another [2023] KEHC 18287 (KLR)



39. It is now six years since the case was filed.
40. It is the court's finding that, in the circumstances of this case, the applicant has not taken steps to prosecute the case in over 2 years. The reason given for his inaction has been found not to be plausible as it was his duty to follow up the progress of his case. Matters complained of are not mere technicalities as they also affect the rights of the respondents to be free from a cloud of prolonged litigation by a party who is not willing to diligently prosecute its case.

Disposal

41. The upshot is that the application dated 5.10.2023 is dismissed for want of merit with costs to the 2nd and 3rd respondents.

**DATED, SIGNED AND DELIVERED AT NAIROBI THROUGH MICROSOFT TEAMS ONLINE
APPLICATION THIS 4TH DAY OF DECEMBER, 2025**

F. Gikonyo M

JUDGE

In the presence of: -

Kevin Okeyo for Ms. Weru for 2nd & 3rd defendant

Ongeri for plaintiff

CA Kinyua

