

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT ELDORET**  
**CIVIL APPEAL NO E095 OF 2022**

**BISHOP JOSEPH LIKAVO T/A IVC CHURCH ELDORET.....**  
**APPELLANT**

**VERSUS**

**JAWABU INTERIORS LIMITED.....1<sup>ST</sup>**  
**RESPONDENT**

**INTEGRATED VISION CENTRE.....2<sup>ND</sup>**  
**RESPONDENT**

**INTEGRATED MEDICAL CENTRE.....3<sup>RD</sup>**  
**RESPONDENT**

**Coram: Before Hon. R. Nyakundi**  
**M/s Munyaga Githaiga Advocates LLP**  
**M/s Mutai, Oduor & Co. Advocates**

**RULING**

1. Before this Court is an Application dated 18<sup>th</sup> February 2026. The Applicant seeks the following orders;
  - a. *That the application be certified as urgent and service be dispensed within the first instance.*
  - b. *That the order of dismissal for want of prosecution entered on the 24<sup>th</sup> day of June 2025 be set aside by the Honourable taxing officer and the party and party bill of costs dated 23<sup>rd</sup> October 2023 be reinstated for hearing and determination.*
  - c. *That the Court be pleased to issue directions for expeditious and efficient disposal of the party and party bill of costs dated 23<sup>rd</sup> October 2023.*
  - d. *That the costs of this application be in the cause.*
2. The Application is made on the following grounds:
  - a. That the instant appeal was dismissed with costs and thereafter the 1<sup>st</sup> Respondent/Applicant filed a party and party bill of costs dated 23<sup>rd</sup> October 2023 which was duly served upon the Appellant/1<sup>st</sup> Respondent.

- b. That on the 24<sup>th</sup> June 2025, the bill of costs which was awaiting taxation was dismissed for want of Prosecution under the Judiciary "Mahakama Popote" initiative without due regard to the status of the file.
- c. That upon noting that the matter had been inactive for a long while without any activity, the applicant's advocates wrote a letter dated 2<sup>nd</sup> October, 2024 and uploaded on the CTS system on 2<sup>nd</sup> October, 2024 requesting for a mention date so the matter could not stall; this goes to show the diligence with which the applicant needed the matter to be heard and determined on merit.
- d. That the Mahakama Popote Guidelines and Case Tracking System failed to issue a notification for the session where the dismissal order was made.
- e. That the non-attendance of counsel was occasioned by the "Mahakama Popote" initiative and the Applicant was not served with the ruling date as per the initiative's cause list.
- f. That the mistake of the court should not result in a miscarriage of justice upon the 1<sup>st</sup> Respondent/Applicant.
- g. That the matter was due for a Ruling with parties having filed submissions awaiting taxation by the Deputy Registrar.
- h. That in the event the orders sought are not granted there is imminent risk of the 1<sup>st</sup> Respondent/Applicant being denied the fruits of the judgment.
- i. That the Appellant/1<sup>st</sup> Respondent will suffer no prejudice if this instant application is allowed and the party and party bill of cost is reinstated for substantive determination.
- j. That reinstatement of the bill of costs is crucial for just, expeditious and efficient dispensation of this suit.

### **Decision**

3. Dismissal of suits is guided by the doctrine under Article 50 2 (e) of the Constitution by import of the Right from the realm of Criminal Law to the Civil justice administration that trials either in the primary suit of an

appeal must begin and concluded within a reasonable time. The other maxim of importance is that justice delayed is justice denied.

4. The Application on taxation was dismissed for want of prosecution on 24/6/2025. The Court in **Saldanha and Others vs Bhailal and Co and Others, Nairobi High Court Civil Case No. 555 of 1955 (Dalton J on 17 November 1967) (HCK) [1968] EA 28** held that;

*“Public policy demands that the business of the Courts should be conducted with expedition and it is of the greatest importance in the interest of justice that these actions be brought to trial with reasonable expedition. The Court does not see how a fair trial can be ascertained after a great delay of 12 years after the cause of action arose. See **Fitzpatrick vs Batger & Co. Ltd [1967] 2 All ER 657; Reggentin vs Beecholme Bakeries Ltd [1967] 111 SOL JO 216.**”*

5. In the event a matter already filed in Court has been dismissed for want of prosecution or non-attendance, the same Court is clothed with unfettered discretion to review the order and substitute it by having the proceedings reopened and determined on the merit. The Court in **Leah Gacambi Ole-Mokel vs Emmanuel Mathew Ole-Mollel 1976 KSLD 6(N7/76)** held as follows;

*[a] For a Suit to be dismissed for want of prosecution there must be a prolonged or inordinate or inexcusable delay in the prosecution of the Suit.*

*[b] The delay must be such as would cause grave injustice to one or both parties*

*[c] The party seeking to have the suit dismissed for want of prosecution must not be guilty of contributing to the delay through inactivity or otherwise.*

*[d] The burden is on the party seeking dismissal of the suit to satisfy the court that the delay is inordinate and inexcusable, and that it will prejudice or do grave injustice to the one side or the other or both, or that the party in default has disobeyed an order of the court*

*in the matter. In such an application of this nature the conduct of the parties and their advocates is relevant.*

*[e] The delay in prosecuting this particular petition was neither inordinate nor inexcusable, and it was contributed to by the respondent.*

6. Essentially, under Article 48 and 50 of the Constitution, the fair trial right cannot be limited by any Court or Tribunal for the expectation of the law is the due clauses on the right to a fair hearing must at all times be the guiding yardstick by any Court exercising discretion on matters of this nature. Accordingly, the Application at hand is meritorious and in terms of Section 80 of the Civil Procedure Act as interpreted and construed by Section 1A, 1B, 3, 3A of the same statute, the impugned order be and is hereby reviewed and set aside to enable the taxation application be subjected to a re-trial before the Deputy Registrar of the High Court within 30 days from today's Ruling. As a matter of expediency a pre-trial shall be held on **9/3/2026** before the Deputy Registrar.

**DATED, SIGNED AND DELIVERED AT ELDORET VIA CTS THIS 26<sup>TH</sup>  
DAY OF FEBRUARY 2026**

.....  
**R. NYAKUNDI  
JUDGE**