



**Greenview Developers Limited v Fatania (Civil Case E370 of 2020)  
[2026] KEHC 2765 (KLR) (Commercial and Tax) (26 February 2026) (Ruling)**

Neutral citation: [2026] KEHC 2765 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
CIVIL CASE E370 OF 2020  
F GIKONYO, J  
FEBRUARY 26, 2026**

**BETWEEN**

**GREENVIEW DEVELOPERS LIMITED ..... PLAINTIFF**

**AND**

**SURESH MOHANLAL FATANIA ..... DEFENDANT**

**RULING**

**Dismissal of suit**

1. When a party says ‘dismiss this case for want of prosecution and non-compliance of some fundamental directions’, one may be tempted to act intuitively to such request. To avoid such impulsive response, courts are guided by principles established to ensure a party is not sent away from the judgment seat unheard whilst also ensuring adherence to the overriding objective of the law and the principle of justice in article 159(2)(b) of *the Constitution* that; ‘justice shall not be delayed’.
2. Dismissal of this suit has been sought on account off want of prosecution and non-disobedience with the ruling and orders issued on 25<sup>th</sup> February 2021. This is the defendant’s plea in the Notice of Motion dated 20<sup>th</sup> May 2025.
3. The application is brought primarily under Order 17 Rule 2 of the Civil Procedure Rules. It is supported by written submissions 30<sup>th</sup> September 2025.
4. The plaintiff did not file any response, despite service.
5. The grounds are: -
  1. Vide a ruling delivered on the 25<sup>th</sup> February 2021, the court stayed the proceedings in this suit and directed the plaintiff does institute arbitration proceedings within 30 days.



2. Despite the explicit orders and timelines issued by the court the plaintiff has taken no steps to refer the matter for arbitration in compliance thereto.
3. The defendant is therefore apprehensive that the plaintiff has lost interest in prosecuting the matter and that the continued pendency of this matter prejudices him.
4. The plaintiff will not be prejudiced if the orders sought are granted.

### **Submissions**

6. The defendant highlighted that it has been four years since the ruling directing the referral of the suit to arbitration and five years from the institution of the suit. It submitted that the plaintiff has not given any justification for the delay in prosecution, therefore the suit ought to be dismissed.
7. The defendant relied on *Governors Balloon Safaris Ltd v Skyship Company Limited & County Council of Transmara* [2013] eKLR, *Argan Wekesa Okumu v Dima College Limited & 2 Others* [2015] eKLR, *Patrick Wanyonyi Khaemba v Teachers Service Commission & 2 Others* [2019] eKLR and *UAP Insurance Company v Toiyoi Investment Limited* [2020] eKLR.

### **Analysis and Determination**

8. Under Order 17 Rule 2(1) of the Civil Procedure Rules: -
  - “(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.
  - (3) Any party to the suit may apply for dismissal of the suit if cause is not shown to the court why the suit should not be dismissed.”
9. Instructive is that; “whereas dismissal of suit for want of prosecution is a matter for the discretion of the court, a court of law should always avoid acting intuitively... or hastily dismissing a suit...rather, it should make further enquiries into the matter under the guidance of the now defined legal principles on the subject of dismissal of cases for want of prosecution...” *Utalii Transport Company Limited & 3 Others V NIC Bank Ltd & Another NBI HCCC No 32 Of 2010* [2014] eKLR: -
10. The reason for this approach is ‘the fact that dismissal of a suit without hearing the merits is draconian act...drives the plaintiff away from the judgment-seat.’ *Anthony Kaburi Kario & 2 Others v Ragati Tea Factory Company Limited & 10 Others* [2014] KEHC 5429 (KLR)
11. Through a ruling dated 25<sup>th</sup> February 2021, the court (Hon. Mabeya J.) stayed the proceedings herein and referred the parties to arbitration in accordance with the sale agreement between them. The court also directed that the arbitration be kick-started within 30 days of the date of the ruling.
12. On 21<sup>st</sup> September 2023, the court noted that Mr. Michuki for the defendant had indicated that the matter was related to HCCC E391 of 2020 and that on 25<sup>th</sup> November 2021, Hon. Muigai J. ordered that they both proceed together and that HCCC E391 of 2020 was pending ruling before Hon. Chepkwony’ J.
13. On 24<sup>th</sup> October 2024, the court noted that HCCC E391 of 2020 was coming up under RRI on 11<sup>th</sup> November 2024. On 17.2.2025, the defendant’s counsel proposed that the matters be consolidated to avoid conflicting orders.



14. Judgment in respect of HCCC E391 of 2020 was delivered on 7<sup>th</sup> November 2025 by Hon. Namisi J.
15. Ordinarily, a suit that is stayed under section 7 of the *Arbitration Act* remains undetermined. However, parties are expected to file the award in the said suit or application for setting aside or enforcement of the award as the case may be, so that the file is closed.
16. I do note also that, the subject matter of this case may have been overtaken by events or become moot following the decision in HCCC E391 of 2020. Its continued existence may just be offensive and res judicata.
17. The foregoing notwithstanding, the plaintiff has not taken any steps to comply with the court's ruling and orders of 25<sup>th</sup> February 2021 in this matter. The application under consideration dated 20<sup>th</sup> May 2025 has been filed about four years and three months after the orders were issued. The plaintiff has not filed any response to the application. It has therefore provided no justification for the inaction.
18. In the absence of any explanation, the delay is inordinate and inexcusable. Inordinate delay in prosecuting the suit leads to injustice as justice ought to be administered without undue delay. Article 159 of *the Constitution*.
19. By delaying the prosecution, the plaintiff has offended the overriding objective of the law is that parties ought to assist the court in an expeditious, proportionate, just and affordable resolution of disputes.
20. Therefore, I find that the defendant's application is merited.

### **Disposal**

21. The defendant's application dated 20<sup>th</sup> May 2025 is allowed in the following terms: -
  1. The plaintiff's suit is dismissed with costs for want of prosecution and for non-compliance with the ruling and orders issued on 25<sup>th</sup> February 2021.
  2. Costs of the application are awarded to the defendant.

**DATED, SIGNED AND DELIVERED AT NAIROBI THROUGH MICROSOFT TEAMS ONLINE APPLICATION THIS 26<sup>TH</sup> DAY OF FEBRUARY, 2026**

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**F. GIKONYO M**

**JUDGE**

In the presence of: -

Michuki for defendant/Applicant

No appearance by Plaintiff

CA – Ivan/Aggrey

