



**Trustees of the Catholic Diocese of Kitale v Solmat Enterprises of Kitale & another
(Environment and Land Case 71 of 2020) [2026] KEELC 1826 (KLR) (24 March 2026) (Ruling)**

Neutral citation: [2026] KEELC 1826 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIRONMENT AND LAND CASE 71 OF 2020**

CK NZILI, J

MARCH 24, 2026

BETWEEN

THE TRUSTEES OF THE CATHOLIC DIOCESE OF KITALE PLAINTIFF

AND

SOLMAT ENTERPRISES OF KITALE 1ST DEFENDANT

ISAAC MACHARIA 2ND DEFENDANT

RULING

1. Through an application dated 25/11/2025, this court is asked to mention this matter along with ELC No. 33 of 2021; reinstate the suit in line with the directions of 3/2/2025. The grounds in support adduced on the face of the application and in the supporting affidavit sworn on 26/11/2025 by Lauren M. Isiaho are that the court directed that ELC No. 33 of 2021 would be heard separately, but concurrently with the instant suit.
2. That despite the said directions, the instant suit was mentioned separately on 28/4/2025, 19/6/2025, 22/7/2025, 17/9/2025, and 2/10/2025. The deponent deposes that on 20/11/2025, ELC No. 33/2021 was scheduled for a hearing, and the plaintiffs' representatives therein and their counsel attended court on the honest belief that the two matters would proceed together.
3. The deponent deposes that she learnt that ELC No. 33/2021 was adjourned to 15/2/2026, since one of the defendant's counsels was indisposed, and no orders were issued in the instant matter, which had apparently been dismissed on 2/10/2025, for want of prosecution, thus occasioning an error apparent on the face of the record. Learned counsel attributes the dismissal to non-service of the notice to show cause.
4. Further, the deponent deposes that the plaintiff is desirous of prosecuting the matter and should not be denied the right to be heard. It is deposed that the application has been brought in good faith and in the interest of justice.



5. The law is that a plaintiff has the primary duty to take steps to prosecute his case. When there is laxity to do so, the court, after satisfying itself that there is an inordinate and inexcusable delay, an abuse of the court process, or there will be prejudice to the other side or in the interest of justice, may dismiss a suit for want of prosecution. See *Wilson Kiarie Njoroge -vs- Family Bank Limited & another* [2015] KEHC 1350 (KLR).
6. In *Dock Workers Union of Kenya -vs- Kenya Ports Authority; Portside Freight Terminals Limited & another (Interested Parties)* [2022] KEHC 12951 (KLR), Mativo J, as he then was, held that the rules permit a court, in appropriate circumstances, to dismiss a suit for want of prosecution.
7. The court said that an intention not to prosecute a suit might be inferred when there is an inordinate delay. The court held that in such a case, a court is called to exercise its discretion to reinstate a dismissed suit. For the applicant to take advantage of the court's discretion does not show what prevented him from prosecuting his case. The court held that sufficient cause means something beyond the reach of the party and that he was not negligent or inactive. The court has not defined the maximum or minimum delay. Delay defeats equity.
8. In *Ivita -vs- Kyumbu* [1984] KLR 441, the court held that the test is whether the delay is prolonged or inexcusable. The court further held that justice is justice to the two parties.
9. In this application, the applicant alleges that there is an error apparent on the face of the record, as this file and ELC No. 33 of 2021 were to be heard together. The order consolidating or setting out such directions has not been attached. Copies of proceedings to show that the plaintiff appeared in the ELC No. 33 of 2021 with the mistaken belief that the two files were to be heard together are not before this court.
10. Assuming that the applicants' lawyers were not in court when ELC No. 33 of 2021 proceeded, where the plaintiff is the 2nd plaintiff. It defeats logic why they did not bring it to the court's attention that this file was missing in the cause list, yet the two files were to be heard together.
11. The court record shows that this file was mentioned several times, in the absence of the plaintiff or his counsel on record. A case belongs to the party. It is the plaintiff who should have been vigilant to prosecute his case. It appears that the plaintiff abandoned its duties not once or twice but severally until the court had no option but to dismiss the suit.
12. The plaintiff is not denying that there was inaction on his part, and neither is he disputing service with the notice to show cause before the suit was dismissed for non-prosecution. Further, the plaintiff has not attached anything from ELC No. 33 of 2021 to show that he was attending court in the said file and was ready to proceed in the matter.
13. As it stands, the plaintiff is being economical with the truth. He seeks to have the two files heard concurrently, when there is already a judgment delivered in ELC No. 33 of 2021. It appears that the applicant, who is also a party in ELC No. 33 of 2021, is not aware of what happened in the said suit, or if he is, he is then asking the court to act in vain by reinstating this suit to be heard with a concluded file.
14. Lethargy and inertia in prosecuting a suit without sufficient cause make it a suit proper and suitable for dismissal for want of prosecution.
15. In *Karuturi Networks Limited & another -vs- Daly & Figgis Advocates* [2009] eKLR, the court held that courts are in the driver's seat in civil processes, to hold the steering wheel of the process firmly, in order to attain its overriding objectives under the law and *the Constitution*. In doing so, the court held



- that it includes inter alia, reducing delay and cost expenses, and at the same time acting expeditiously and fairly.
16. The court further held that to operationalize or implement the overriding objective, it calls for new thinking, innovation, and the active management of cases before the court.
 17. In *Njue Ngai -vs- Ephantus Njiru Ngai & Another* [2016] eKLR, the court held that dismissal of a suit for non- attendance or non-prosecution by a plaintiff amounts to a judgment.
 18. Whether to set aside or not, such an order depends on whether there is sufficient cause, reasons, or explanation for the non-attendance or non-prosecution. Delay and prejudice to the other party and the interest of justice must also be considered. The court is mainly concerned with doing justice to the parties, as held in *Patel -vs- E.A Cargo Handling Services Ltd* (1974) E.A.
 19. What I find disturbing is that the plaintiff, instead of owning up to the mistake, is solely blaming the court for an alleged error or mistake. The plaintiff knew that the matter had been allocated another date the last time it was in court.
 20. The plaintiff is silent on whether it went into slumber or what he was waiting upon, if not positive or negative consequences. A case belongs to a party, and a party that sits and thinks the court is unable to discharge its mandate one way or the other must come to terms that failure to prosecute suits or inactions on the part of the plaintiff is fatal.
 21. Sufficient cause literally means that an applicant must show that he was not negligent, there was no inaction or want of bona fides. See *Registered Trustees of the Archdiocese of Dar es Salaam -vs- The Chairman, Bunju Village Government and 11 Others*, Civil. Appeal No. 147 of 2006.
 22. The delay herein has not been explained from the last mention to the dismissal and soon thereafter. The applicant was not following up on the matters. See *Patrick Wanyonyi Khaemba -vs- Teachers Service Commission, Board of Management, Kapletingi Mixed Day Secondary School & Francis Tanui* [2019] KECA 112 (KLR).
 23. Where there is no valid excuse for the delay. The court must guard itself against the dangers of being led by sympathy. In *Parimal -vs- Veena* [2011] 3 SCC 545, the Supreme Court of India held that sufficient cause means adequate, enough, based on the circumstances and facts in issue.
 24. This suit was dismissed after several mentions in the absence of the plaintiff, who has not in any way shown sufficient cause. The alleged error is not demonstrated.
 25. The upshot is I find the application incompetent and lacking merit. It is therefore dismissed with costs.
 26. Orders accordingly.

RULING DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT KITALE, THIS 24TH DAY OF MARCH 2026.

HON. C.K. NZILI

JUDGE, ELC KITALE.

In the presence of:

Court Assistant - Dennis

No appearance.

