

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KIAMBU

CIVIL CASE NO.E010 OF 2022

RUTH NJERI WAIRIMU.....PLAINTIFF

VERSUS

DOUGLAS NGANGA KIAMBUTHI.....DEFENDANT

DIRECTIONS

1. This matter came up for hearing of the Defence case on 4th March, 2026. However, the Defence Counsel sought for an adjournment on the basis that the Defendant had travelled to South Africa as he is a long distance truck driver and could not manage to travel back in time for the hearing due to mechanical problems on his motor vehicle. Counsel sought court's indulgence since this was not the first time for them to make such application.
2. The Plaintiff's Counsel opposed the application for adjournment arguing that this was the fifth time for the defence to be seeking an adjournment in a period of two years, to the extent that the court had issued last adjournment

orders. She states that while they have been keen in having this matter finalised, the Defence is not desirous to having the matter concluded and that a further adjournment will be an injustice to the Plaintiff. She further added given that the matter is proceeding virtually, the Defendant ought to have taken steps to log onto the virtual court platform. She urged the court to decline the invitation to grant another adjournment and order the Defendant to either proceed with the hearing or close his case.

3. In rejoinder, the Defendant's Counsel denied that the matter has been adjourned at his request on five occasions. He stated that there are instances where the matter has not proceed due to the court being engaged in other duties. He states that the reason for applying of the adjournment is because of his client being away and urged the court to take judicial notice of connectivity challenges. He then urged that it will be a drastic step to order the Defendant to close his case without giving him a chance to be heard.
4. Having listened to the Plaintiff's Counsel and the Defendant's Counsel in their respective arguments and sentiments, it is important that a chronology of the proceedings herein be highlighted for parties to appreciate each others sentiments on the application for adjournment. It is worth noting that this is a 2022 matter. The first hearing was to take place on **25th September, 2023**

but while the Defence Counsel was not present, the Plaintiff was said to be indisposed. The matter was then adjourned to **27th November, 2023**, on which day the court heard the Plaintiff's case and the Defendant's counsel sought and was granted an adjournment on the ground that the Defendant who is a truck driver, was away.

5. The next hearing date was fixed for **6th May, 2025**. On this day, the Defendant sought and was granted an adjournment on the basis that the Defendant's daughter was unwell and he had to attend to her in school. The matter was fixed for hearing on **24th June, 2025**, and again the Defendant sought and was granted an adjournment for the reason that the Defendant had fallen ill on his return from South Africa and was admitted in Hospital. However, no medical evidence was availed to confirm this. It was on this day that the Plaintiff's Counsel objected to any adjournment being granted while pointing out that the Defendant was not keen on having the matter concluded. The court considered the arguments and granted the defence a last adjournment with an order that the Defendant pays costs.

6. On **29th October, 2025**, the matter came up for hearing and the Defendant's Counsel again stated that he was not ready to proceed due to lack of instructions from his client. He even went on to and sought for leave to file

an application to cease acting. On **26th November, 2025**, the Defendant's counsel instead sought to withdraw his request for leave to file an application to cease acting for the Defendant and the court fixed the matter for hearing on **4th March, 2026**.

7. Having provided the history as per the record, it is clear that this Court has indulged and granted the defence several adjournments on almost similar grounds to the extent that on 24th June, 2025, it marked the same as a last adjournment. It is worth noting that the reason advanced today, that the reason that has been advanced of the Defendant being in South Africa is the same reasons that had been advanced before this Court on the other occasions. It is also note-worthy that the hearing dates have always been fixed in the presence of counsel and there is always considerable period in between the dates to enable counsel arrange himself for court attendance either physically or virtually. The court cannot keep adjourning the matter at the expense of its time and that of the Plaintiff.

8. The Defendant's counsel has argued that the court should not be moved by the invitation by counsel that they close their case without the Defendant's evidence as this is a draconian move that aimed to deny the Defendant an

opportunity to be heard. While it is in the interest of justice to have a party to be afforded an opportunity to prosecute his/her case expediency in hearing is also in the interest of justice and fair trial that a case becomes and concludes without unreasonable delay. It is very evident that there has been inordinate delay by the Defendant in having the case prosecuted.

9. As clearly stated by the Plaintiff, courts are now virtual and matters proceed without requiring physical attendance of the parties who are unable to attend court by virtue of being in different countries. Thus, the fact of being in South Africa is not an excuse for the Defendant not attend to his matter especially given that the date was given about three (3)months ago and court having marked the same as a last adjournment. And even then, there has been no evidence to confirm these excuses and the Defendant's Counsel and the Defendant ought to have taken requisite steps to arrange on how to proceed.

10.It is clear that there is lack of cooperation and these repeated delays in disposing of the matter on the same reason. Courts frown against unnecessary delays, especially due to repeated excuses.

11. This Court finds that due to the repeated excuse and unnecessary delays that have not been justified, the application for adjournment is not merited and the reason advanced not valid to warrant grant of an adjournment, especially given the date when the defence case fell due and this court having already issued an order for a last adjournment.

12. In the ultimate, the court declines the application for an adjournment and directs the defence to proceed with their case or whichever way they deem fit, and if not, they close their case.

It is so ordered.

**RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU
THIS 4TH DAY OF MARCH, 2026.**

**D. O. CHEPKWONY
JUDGE**

In the presence of:

M/S Nasamba counsel for Plaintiff

Mr. Matwere counsel for Defendant

Court Assistant - Sakina