



REPUBLIC OF KENYA



**KENYA LAW**  
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**Waigi v Ekai (Environment and Land Case Civil Suit  
508 of 2017) [2024] KEELC 5583 (KLR) (18 July 2024) (Ruling)**

Neutral citation: [2024] KEELC 5583 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND CASE CIVIL SUIT 508 OF 2017**

**LN MBUGUA, J**

**JULY 18, 2024**

**BETWEEN**

**JOSEPH KIMANI WAIGI ..... PLAINTIFF**

**AND**

**JOHN LOKADE EKAI ..... DEFENDANT**

**RULING**

1. Before me is the plaintiff's Notice of Motion application dated 20.12.2023 seeking orders for review of the orders given on 4.12.2023 in which the plaintiff's suit was dismissed, and that the interim orders of injunction given on 22.11.2017 be reinstated. The application is premised on the grounds set out on the face of the application and the supporting affidavit of Ben Francis Aloo, the advocate for the applicant.
2. It is argue for the applicant that the impasse between him and his advocate related to legal fees, and that on 4.12.2023, the applicant did walk into his advocates office with the said legal fees. But by then, the suit had been dismissed.
3. In his submissions dated 29.1.2024, the plaintiff has urged the court to apply substantive justice and reinstate the suit. To this end, the applicant has invoked the provisions of Section 1A & 1B of the *Civil Procedure Act* on the principle of the overriding objectives to facilitate the just, expeditious resolution of disputes. The applicant has proffered the cases of *Wachira Karani -v- Bildad Wachira [2016] eKLR*, *Ivita vs. Kyumbu* [1984] KLR 441 (Chesoni J), *Jim Rodgers Gitonga Njeru vs. Al-Husnain Motors Limited & 2 others* [2018] eKLR and *Richard Ncharpi leiyagu vs IEBC & 2 Others* CA 18/2013 in support of the arguments to have the suit reinstated.
4. The applicant is also beseeking the court to grant the interlocutory injunction so as to balance the competing rights of both parties with a resultant effect to do justice. To this end, the applicant relies



on the case of *Michael Mowesly v Kazungu Sana Sana; Abdulrehman Mohamed Basbeikh & 2 others (Interested Parties)* [2022] eKLR.

5. The application is opposed by the defendant vide his replying affidavit dated 9.1.2024. It is averred that previously, the plaintiff and his advocate had failed to be in court and that no explanation was given as to why the applicant was not in court on the day of the hearing.
6. In his submissions dated 5.2.2024, the respondent urges the court to dismiss the application arguing that litigation must be concluded expeditiously and that the narration of the events by the applicant does not add up.
7. The issue for determination is whether the applicant's suit should be reinstated along with the interim orders of injunction issued in the year 2017. Some of the factors which guide the court in an application of this nature are; whether there has been inordinate delay on the part of the Plaintiffs in prosecuting the case; whether the delay is intentional, contumelious and, therefore, inexcusable; whether the delay is an abuse of the court process; whether the delay gives rise to substantial risk to fair trial or causes serious prejudice to the Defendant; what prejudice will the dismissal occasion to the plaintiff; and whether the plaintiff has offered a reasonable explanation for the delay; See *James Yanga Yeswa v Bob Morgan Services Limited* [2019] eKLR.
8. In *Mwangi S. Kimenyi v Attorney General & another* [2014] eKLR, the court stated that;  
“The decision whether a suit should be re-instated for trial is a matter of justice and it depends on the facts of the case”.
9. While in *Ivitav Kyumbu* [1984] KLR 441, Chesoni, J. (As he then was) had this to say on the matter:  
“The test is whether the delay is prolonged and inexcusable, and, if it is, can justice be done despite such delay”.
10. I have perused the entire record, before and after the dismissal of the suit. This application was certainly filed timeously after the suit was dismissed on 4.12.2023. However, the history of the suit before that date of the dismissal of the suit paints a grim picture of how the plaintiff was prosecuting (actually not prosecuting) the suit.
11. The records of the court indicate that plaintiff's application for injunction dated 24.7.2017 was allowed on 22.11.2017, of which the court gave directions on the filing of paginated trial bundles containing witness statements and documentary evidence in preparation for the hearing of the suit.
12. On 12.7.2021, the advocates for the protagonists informed the court that both sides had complied and they sought to be given a hearing date. The court obliged and gave the date of 22.6.2022.
13. Come the date of 22.6.2022 and the advocate for the plaintiff was absent! The advocate for the defendant informed the court that plaintiff's counsel had written to them indicating that they had no instructions. The court gave another date for hearing that is on 15.2.2023.
14. On that date of 15.2.2023, counsel for the plaintiff informed the court that; “I am trying to call my client in vain, he was however aware..”. The court proceeded to have the case adjourned to 4.12.2023. However, this time round the court gave a rider that the case would not be adjourned again. Come the date of 4.12.2023 and the counsel for the plaintiff informed the court that their client had failed to pay fees. That is when the matter was dismissed.



15. One of the cardinal principles in our constitution is “the expeditious delivery of justice” – see Article 159 (2) (b) of *the Constitution* of Kenya, which in effect codifies the 17<sup>th</sup> century maxim of “Justice delayed is justice denied”. This means that if justice is not provided in a timely manner to the parties, it loses its importance and it violates the human rights of the litigants and their families. That is precisely why rights to speedy trials are incorporated in law worldwide. Thus in Law and in Equity, delayed justice is abhorred.
16. In the case of *Moschion v Mwangi (Environment & Land Case 350 of 2018)* [2023] KEELC 17144 (KLR) (27 April 2023) (Ruling), this court while dismissing several consolidated matters for failure to comply with court’s directions stated as follows;

“The right to be heard is sacrosanct and is embodied in the latin maxim “audi alteram partem”. However, a party is only entitled to reasonable opportunity to be heard, See *Nginyanga Kavole vs. Mailu Gideon* (2019) eKLR. The instant case appears to be one of mere inaction which is not excusable. Thus this is a situation whereby the plaintiff has driven herself from the seat of justice”.
17. Similarly, I find that the instant case is one where the plaintiff filed the suit and then went into slumber. There is no plausible explanation as to why the plaintiff was unable to prosecute the suit as from 12.7.2021 when the matter was certified as ready for hearing. Furthermore, the orders of 15.2.2023 had actually put the plaintiff on notice, that the case would not be adjourned again, noting that he had almost one year from the said date (15.2.2023) to sort out his issues with his advocate.
18. In the end, I find that the failure to prosecute the suit was not adequately explained and that bringing back the suit to life would be prejudicial to the opposite party as well as to the overall administration of justice. Thus the prayer for reinstatement of the suit is declined. It follows that the prayer for injunction must fall by the way side.
19. In the end, I find that the application dated 20.12.2023 is not merited, the same is hereby dismissed with costs to the respondent.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 18<sup>TH</sup> DAY OF JULY, 2024 THROUGH MICROSOFT TEAMS.**

**LUCY N. MBUGUA**

**JUDGE**

**In the presence of:-**

Njuguna for Defendant Respondent

Aloo holding brief for Maruti for Plaintiff/Applicant

Court Assistant: Eddel

