



**Philip Muoka & Company Advocates v SBM Bank (K) Limited (Miscellaneous Case E199 of 2022) [2024] KEELC 13658 (KLR) (25 November 2024) (Ruling)**

Neutral citation: [2024] KEELC 13658 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
MISCELLANEOUS CASE E199 OF 2022  
MD MWANGI, J  
NOVEMBER 25, 2024**

**BETWEEN**

**PHILIP MUOKA & COMPANY ADVOCATES ..... APPLICANT**

**AND**

**SBM BANK (K) LIMITED ..... RESPONDENT**

**RULING**

(In respect to the Notice of Motion dated 11th November 2024 brought under Order 12 Rule 7 of the Civil Procedure Rules and Section 3A of the Civil Procedure Act)

**Background**

1. On 11th November 2024, this Court dismissed this matter for want of prosecution pursuant to a Notice to Show Cause issued upon the Advocate/Applicant by the Court on its own motion. The Advocate/Applicant filed this application on the same date seeking the setting aside of the dismissal order and reinstatement of his Bill of Costs dated 4th July, 2022.
2. The Advocate/Applicant in his application explained that upon receiving the Notice to Show Cause issued by the Court, he appointed the firm of Kimani Wambua and Company Advocates to represent him in the matter. The Advocate however mis-diarized; wrongly indicating in his diary that the matter was coming up on 12th November 2024 instead of 11th November 2024. Accordingly, when the matter was called out, there his Advocate was not present for him and the Court proceeded to dismiss the Bill of Costs for want of prosecution since no cause was shown.
3. The Advocate/Applicant pleads for the setting aside of the dismissal order and reinstatement of the Bill of Costs to be considered on its merits. He affirms that he is ready and desirous of prosecuting the matter to its final conclusion. He further states that the delay in prosecuting the Bill of Costs was occasioned by an objection raised by the Client/Respondent in other related matters alleging that it



had paid the Advocate's fees for the work done. The Advocate/Applicant therefore decided to hold this matter in abeyance awaiting the ruling on the objections by the Client.

**Determination.**

4. The principles to be considered in an application to reinstate a suit dismissed for want of prosecution were laid down in the case of *Ivita v Kyumbu* (1984) KLR 441, where the Court held that;

“The test is whether the delay is prolonged and inexcusable, and, if it is, can justice be done despite such delay. Justice is justice to both the plaintiff and defendant; so both parties to the suit must be considered.”

5. Again, in *Shah v Mbogo* (1968) EA, the Court held that,

“The exercise of the discretion of the court to set aside ex-parte orders is to avoid an injustice or hardship resulting from accident, inadvertence or excusable mistake or error and not otherwise to delay justice.”

6. The Applicant in this case moved to file this application immediately on learning about the dismissal. Even before the ink had dried on the paper, so to speak. Such demonstration of diligence conveys goodwill and sincerity on the part of the Advocate/Applicant. His application meets the test set out in the *Ivita* case.

7. The Applicant has further gone ahead to explain the cause of the delay in prosecuting the Bill of Costs. I am persuaded by the explanation advanced.

8. Consequently, the order dismissing the Applicant's Bill of Costs herein issued on 11<sup>th</sup> November 2024 is hereby set aside. The Advocate -Client Bill of Costs dated 7<sup>th</sup> July, 2022, is hereby reinstated for purposes of taxation by the Taxing Master in accordance with the provisions of the Advocates Remuneration Order.

9. I make no orders as to costs.

It is so ordered.

**RULING DATED, SIGNED AND DELIVERED AT NAIROBI THIS 25<sup>TH</sup> DAY OF NOVEMBER, 2024.**

**M.D. MWANGI**

**JUDGE**

In the virtual presence of:

Nr. Kimani for the Advocate/Applicant

N/A by the Client/Respondent

Court Assistant: Yvette

**M.D. MWANGI**

**JUDGE**

