



**Kipsigis Teachers College v African Banking Co-operation Ltd (Environment & Land Case 19 of 2019) [2023] KEELC 129 (KLR) (19 January 2023) (Ruling)**

Neutral citation: [2023] KEELC 129 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KERICHO  
ENVIRONMENT & LAND CASE 19 OF 2019  
MC OUNDO, J  
JANUARY 19, 2023**

**BETWEEN**

**KIPSIGIS TEACHERS COLLEGE ..... PLAINTIFF**

**AND**

**AFRICAN BANKING CO-OPERATION LTD ..... DEFENDANT**

**RULING**

1. Before me for determination is the Notice of Motion dated February 8, 2021 brought under Section (sic) 45(1) of the Civil Procedure Rules and Section 3A of the *Civil Procedure Act* and all enabling provisions of the law where the Applicants seeks to set aside the dismissal orders of February 2, 2021 and have the suit reinstated for hearing and disposal. They also seek for the application dated March 27, 2019 to be reinstated for hearing afresh, and for an extension of leave to file a copy of the resolution dated June 15, 2020.
2. The application was supported by the grounds therein as well as by the supporting affidavit dated the February 8, 2021 sworn by one of the Directors Mr Enock Kipkurui.
3. The application was opposed by the Replying Affidavit of the Respondent's Branch Manager Mr Dougls Okiring which was sworn on the March 15, 2021. The Respondent's contention is that the Applicant's application is a gross abuse of the court process as the same sought to adopt a procedure unknown in law. That the evidence sought to be introduced by the Applicant did not constitute the discovery of a new and important evidence which after the exercise of due diligence was not within the Applicant's knowledge and/or could not be produced by them at the time the dismissal order was made.
4. From the record, it is clear that the striking out of the suit on the February 2, 2021 was informed by the court's earlier ruling of May 20, 2020 which had been categorical to the effect that should the Resolution of the Applicant's Company rectifying the filing of the suit by the firm of M/s J K Rono



and Company Advocates accompanied with an affidavit in support therein not be filed in court within 60 days from the date of the ruling, the suit would stand struck out. By the February 2, 2021, about nine months later, and/or in fact to date, there had been no compliance with these directives.

5. On the July 30, 2020, without complying with the court order, Counsel for the Applicant hurriedly filed an application dated August 27, 2020, seeking interim orders of injunction against the Respondent seeking to restrain them from advertising for sale, alleviating or foreclosing the land parcel No Kericho/Kabartengan/854, 1218 and 1328. He also sought for the review of the ruling dated May 6, 2020. On September 3, 2020 the court directed that the hearing date for the application be fixed in the Registry.
6. The matter was then slated for hearing for the October 5, 2020, on which day Counsel for the Applicant sought for more time to file a further Replying Affidavit to the Respondent's Replying Affidavit wherein the matter was fixed for mention for the November 10, 2020. Although the further Replying Affidavit was filed on the November 6, 2020, on the day scheduled for mention, there was no appearance for Counsel for the Applicant. The matter was then fixed for the January 19, 2021 for further orders, on which day again Counsel for the Applicant was not present and the matter was placed for mention for the February 2, 2021 when it was struck out for non-compliance as per the orders of court's ruling of May 20, 2020. The Applicant's Counsel then sought leave to appeal, was granted 30 days but filed no Notice of Appeal or the Appeal.
7. Suffice to state that the Applicant's Counsel then filed the present application dated the February 8, 2021 and was given the March 18, 2021 as a date for taking directions on the hearing of the same. Parties went to slumber until the \*30<sup>th</sup> February 2022\* when the court suo motto fixed the matter for mention for the May 30, 2022 on which day it directed, in the absence of Counsel for the Applicant that the application dated the February 8, 2021 be disposed of by way of written submissions. Only the Respondent complied despite there having been set a date to confirm compliance.
8. As I write this ruling, I note that only the Respondents have complied wherein they filed their submissions on the July 25, 2022. The Applicants did not comply with the orders of the court, yet again, to file their written submissions. It is now a settled practice under the new constitutional dispensation that filing of written submissions is the norm as written submissions serve the purpose of expedience and amounts to addressing the court on the evaluation of the evidence of each party and analysis of the law. It is therefore trite that an Applicant who fails to file his submissions on an application as ordered by the court is deemed as a party who has failed to prosecute their application and therefor that application is liable for dismissal.
9. The filing of submissions having been ordered, and this court having extended time for compliance without compliance, the failure by the Applicant to exercise the leave granted to them to file written submissions as well as to abide by orders issued earlier coupled with the *laissez faire* manner in which they have treated this matter clearly demonstrates inertia and inordinate delay, lack of interest and/or seriousness on their part, in the prosecution of the matter.
10. The Court of Appeal in *Rowlands Ndegwa and 4 Others v County Government of Nyeri and 3 Others; Agriculture, Fisheries and Food Authority & Another (Interested Parties) [2020] eKLR*, citing with approval the decision of the High Court in, *Winnie Wanjiku Mwai v Attorney General & 3 Others [2016] eKLR*, observed as follows:

' With regard to dismissal for want of prosecution, there are indeed no hard and fast rules as to the manner in which the inherent power and discretion to dismiss an action for want of prosecution is to be exercised. It is however generally accepted that dismissal will be invited



if there should be a delay in the prosecution of the action and the Respondent is prejudiced by the delay with attention also being paid to the reasons for the inactivity.'

11. The mode of hearing having been communicated to the parties and the Applicant having consented to the same and there having been no compliance, I am persuaded to dismiss the main motion dated the February 8, 2021, which I now do, with costs.

**DATED AND DELIVERED VIA MICROSOFT TEAMS AT KERICHO THIS 19TH DAY OF JANUARY 2023**

**M.C. OUNDO**

**ENVIRONMENT & LAND – JUDGE**

