



**Imperial Bank Ltd (In Liquidation) v Juanco Investments Ltd & 10 others (Commercial Case 523 of 2015) [2025] KEHC 3692 (KLR) (Commercial and Tax) (26 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 3692 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
COMMERCIAL CASE 523 OF 2015  
F GIKONYO, J  
MARCH 26, 2025**

**BETWEEN**

**IMPERIAL BANK LTD (IN LIQUIDATION) ..... PLAINTIFF**

**AND**

**JUANCO INVESTMENTS LTD & 10 OTHERS & 10 OTHERS ..... DEFENDANT**

**RULING**

**Adjournment for lack of witnesses**

1. When this suit came up for hearing on 24<sup>th</sup> March, 2025, Ms. Arora, legal counsel for the plaintiff, applied for adjournment of the hearing, because the plaintiff, despite best efforts, was not able to procure their key witnesses (FTI) to attend court for hearing of the case. These are the key witnesses in the plaintiff's case because they carried out the forensic investigations and made a report on the conduct of the affairs of the plaintiff.
2. Ms. Lubano appearing together with Ms. Arora buttressed two issues. That, this is a public interest case involving massive misappropriation of money belonging to the public. And, that the local witnesses are merely supplementary to the key witnesses (FTI). She beseeched the court not to dismiss the case, but give it another opportunity.
3. Ahmed Nasir, SC, legal counsel for all defendants except the 6<sup>th</sup> defendant, vehemently opposed the adjournment. He stated that the plaintiff has applied for adjournment on five previous occasions causing inordinate delay in the finalization of this case. He was utterly concerned that a party can come to court and then fail to prosecute their case for ten (10) years. According to him, this is great prejudice to the defendants. He also stated that failure by the plaintiff to fasten a fees agreement with its witnesses is not a reason to stall the case. He submitted that, the plaintiff be ordered to proceed with the case or the court strikes out the case.



4. Musa for the 6<sup>th</sup> defendant associated himself with the submission by Ahmed Nasir, SC. Except added that the plaintiff's legal counsel did not say anything about the local witnesses.

### **Analysis and determination**

5. *The Constitution* customized the overriding objective of the law as well as the old-age adage; justice delayed is justice denied; into a constitutional principle; justice shall not be delayed. Art.159(2)(b) of *the Constitution*.
6. The overriding objective principle which was introduced in our law through *Act No. 6 of 2009* is '...to facilitate the just, expeditious, proportionate and affordable resolution of the civil disputes governed by the Act.' S.1A(1) of the *Civil Procedure Act*.
7. And places a duty on; 'A party to civil proceedings or an advocate for such a party... to assist the Court to further the overriding objective of the Act and, to that effect, to participate in the processes of the Court and to comply with the directions and orders of the Court.' S.1a(3) of the *Civil Procedure Act*.
8. And these constitutional and statutory instruments place a duty on the court to ensure the attainment of the overriding objective in the dispensation of justice.
9. Needless to remind that, justice is to all, including parties in the suit; not some or only the plaintiff. The obligation to further the overriding objective is upon all the parties or persons involved in the suit. All these ensure that justice shall not be delayed.
10. Accordingly, a plaintiff is under a duty not to temporize his own case to the point where it becomes a source of prejudice to fair trial and the parties in the suit.
11. Part of the history of this matter, which is relevant to this ruling is set down below.
12. On 8/3/2021 directions were given that the case to begin de novo. Hearing was scheduled for 4,5,6 & 7<sup>th</sup> October, 2021
13. On 4/10/21 case was set for mention on 24/11/21 to take a trial date.
14. On 24/11/21 hearing was scheduled for 23,24,25 & 26<sup>th</sup> May 2022
15. On 16/5/2022 the above hearing dates were vacated to await a ruling that was pending.
16. On 9/3/23 hearing dates were scheduled for 7, 16,17,18,23,24 and 25 Oct 2023.
17. On 16/10/2023 the hearing was adjourned for unavailability of plaintiff witness and the matter was taken out of the day's and subsequent days' cause lists in which hearing had been scheduled for 13,14,15,16 May 2024.
18. On 13/5/2024, on the application by M/s Khadija for defence, the matter was taken out of the whole week's list and fixed for hearing on 22-24<sup>th</sup> July 2024.
19. On 22/7/2024 hearing was adjourned at the instant of the plaintiff. Hearing was set for 7<sup>th</sup>, 28<sup>th</sup> November and 3<sup>rd</sup> & 4<sup>th</sup> December 2024.
20. The court put a note: If for any reasons the trial shall not commence on 7<sup>th</sup> November and proceed as scheduled the orders in force shall remain discharged.
21. On 7/11/2024 the Court (Mabeya J) was on transfer and fixed the hearing of the case on 25, 26 & 27<sup>th</sup> March 2025.



22. Come 25.3.25; Ms. Arora, legal counsel for the plaintiff made an application for adjournment, which is the subject of this ruling.
23. It bears repeating that the plaintiff bears the duty to prosecute their case on the day it is fixed for hearing. And, where the plaintiff fails to prosecute its case on the day it is called out for hearing, the suit may be dismissed for want of prosecution. The effect of such dismissal is dire as it may prevent filing of fresh suit in respect of the same cause of action.
24. From the record, the plaintiff has failed to prosecute its case in numerous occasions, although in some instances, other causes prevented the hearing from taking place.
25. Two realities. This case is ten years old. Litigation must be concluded within reasonable time. Nevertheless, this case has a public-interest element which deserves a last chance. Therefore, I order that the case be fixed for hearing on a date to be appointed by the court with consensus amongst the parties, when the plaintiff shall prosecute its case. If the plaintiff, for reason attributable to it, fails to prosecute the case on the appointed date, the suit shall stand dismissed. This is self-executing order aimed at ensuring the case is done and also protects the rights of the defendants.
26. Orders accordingly.

**DATED, SIGNED AND DELIVERED AT NAIROBI THROUGH MICROSOFT TEAMS ONLINE APPLICATION THIS 26<sup>TH</sup> DAY OF MARCH, 2025**

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**F. Gikonyo M**

**Judge**

In the presence of: -

1. Ahmed Nasir, SC, for the defendants except 6<sup>th</sup> defendant
2. Musa for 6<sup>th</sup> defendant
3. Ms. Arora/Ms. Lubano for plaintiff
4. Godfrey C/A

