



**JNW v COO (Matrimonial Cause 8 of 2023) [2025] KEHC 7761 (KLR) (30 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 7761 (KLR)

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT ELDORET**  
**MATRIMONIAL CAUSE 8 OF 2023**  
**RN NYAKUNDI, J**  
**MAY 30, 2025**  
**IN THE MATTER OF THE MATRIMONIAL PROPERTY ACT 2014**  
**AND**  
**IN THE MATTER OF SECTION 7, 8, 9, 11, 14 AND 17 OF THE**  
**MATRIMONIAL PROPERTY ACT**  
**AND**  
**IN THE MATTER OF SETTLEMENT OF MATRIMONIAL PROPERTY**  
**BETWEEN**  
**JNW ..... PLAINTIFF**  
**AND**  
**COO ..... DEFENDANT**

**RULING**

1. The Applicant herein filed Originating Summons Application dated 12<sup>th</sup> July 2023 where she was seeking the following orders:
  - a. That declaration do issue, declaring that the Plaintiff is the sole and proprietor of all that parcel of land known as LR. No. Pioneer/Langas Block 1(Malel)/7X6.
  - b. That the Defendant/Respondent be compelled to hand over all household items and accessories on the house built on land parcel LR. No. Pioneer/Langas Block 1(Malel)/7X6.
  - c. That the Defendant/Respondent be compelled to vacate immediately and keep away from the house and the whole parcel of land LR. No. Pioneer/Langas Block 1(Malel)/7X6.
  - d. That the Court do issue an order to restrain the Defendant/Respondent from sending any amorous, abuse or defamatory messages threats whatsoever to the Plaintiff/Applicant.



- e. That the OCS Langas do provide security in effecting the orders granted herein.
  - f. That costs of this summon be provided by the Respondent.
2. The record is clear that this matter has never proceeded since the filing of this application on 24<sup>th</sup> July 2023. However, since that date, the court record reveals no steps have been taken by the Applicant to advance the prosecution of the application.

### **Decision**

3. The law on dismissal of suits for want or prosecution is anchored in Order 17 Rule 2 of the Civil Procedure Rules which provides that:
  - (1) In any suit in which no application has been made or step taken by either party for one year, the court may give notice in writing to the parties to show cause why the suit should not be dismissed, and if cause is not shown to its satisfaction, may dismiss the suit. (2) If cause is shown to the satisfaction of the court it may make such orders as it thinks fit to obtain expeditious hearing of the suit.

4. In *Argan Wekesa Okumu vs Dima College Limited & 2 others* (2015) eKLR, the court considered the principles for dismissal of a suit for want of prosecution and stated as follows:

The principles governing applications for dismissal for want of prosecution are well settled and have been established by a long line of authorities. The Applicant must show that the delay complained of is inordinate, that the inordinate delay is inexcusable and that the Defendant is likely to be prejudiced by such delay. As such the 3rd Defendant in this case must meet the burden of proof in seeking the dismissal of the Plaintiff's case for want of prosecution see the case of *Ivita –vs-Kyumbu* (1984) KLR 441. Further to this, the decision of whether or not to dismiss a suit is discretionary and this Court must exercise such discretion judiciously. Additionally, each case must be decided on its own facts keeping in mind that a court should strive to sustain a suit where possible rather than prematurely terminating the same.'

5. Similarly in *Vintage Investments Limited vs Amcon Builders Limited & another (Civil Appeal 45 of 2019)* [2021] KECA 259 (KLR) (3 December 2021) (Judgment), the Court of Appeal held that:

In considering an application for dismissal of a suit for want of prosecution, a defendant (like the appellant herein) must show:(I) That there had been inordinate delay. What is or is not inordinate delay must depend on the facts of each particular case. These vary infinitely from case to case but should not be too difficult to recognize inordinate delay when it occurs. ii. That this delay is inexcusable. As a rule, until a credible excuse is made out the natural inference would be that it is inexcusable. iii. That the defendants are likely to be seriously prejudiced by the delay. This may be prejudice at the trial of issues between themselves and the plaintiff or between each of other or between themselves and third parties. In addition to any interference that may properly be drawn from the delay itself, prejudice can sometimes be directly proved. As a rule, the longer the delay the greater the likelihood of prejudice at trial.' See *Allan vs Sir Alfred Mc Alphine and Sons Ltd* [1968] 1 ALL ER 543.'

6. The power of a court in dismissal of a suit for want of prosecution under Order 17 of the Civil Procedure Rules is discretionary. I am guided by the sentiments of Aburili J in *Nilesh Premchand Mulji*



Shah & Another t/a Ketan Emporium vs MD Popat and others & another (2016) eKLR, where she stated as follows:

Nonetheless, Article 159 of the Constitution and Order 17 Rule 2(3) gives the court the discretion to dismiss the suit where no action has been taken for one year and on application by a party as justice delayed without explanation is justice denied and delay defeats equity. That discretion must be exercised on the basis that it is in the interest of justice regard being had to whether the party instituting the suit has lost interest in it, or whether the delay in prosecuting the suit is inordinate, unreasonable, inexcusable, and is likely to cause serious prejudice to the defendant on account of that delay.'

7. I take cognizant note that the record shows that this matter was last in court on 24<sup>th</sup> March 2023. However, since that date, the court record reveals a conspicuous absence of any steps taken by the parties to the case to advance the prosecution of the application.
8. Having carefully considered the circumstances of this case, I am satisfied that this is a proper case for the exercise of this court's discretion to dismiss this suit for want of prosecution. This is because the full one-year period contemplated under Order 17 Rule 2(1) has elapsed since the matter was last in court on 24<sup>th</sup> March 2023 which is 2 year 2 months.
9. Consequently, this suit is dismissed for want of prosecution.
10. It is so ordered.

**DELIVERED, DATED AND SIGNED AT ELDORET ON THIS 30<sup>TH</sup> MAY 2025**

.....

**R. NYAKUNDI**

**JUDGE**

