



**Muthiora v Ndirangy t/a Samidoh & another (Civil Case  
8 of 2023) [2025] KEHC 7767 (KLR) (Civ) (29 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 7767 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL  
CIVIL CASE 8 OF 2023**

**SN MUTUKU, J  
MAY 29, 2025**

**BETWEEN**

**VICTORIA WANJIRU MUTHIORA ..... APPLICANT**

**AND**

**SAMUEL MUCHOKI NDIRANGY T/A SAMIDOH ..... 1<sup>ST</sup> RESPONDENT**

**LAWRENCE MACHARIA T/A TERENCE CREATIVE ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

**The Application**

1. The Applicant herein filed the Notice of Motion (the Application) dated 26<sup>th</sup> July 2024, under Order 12 Rule 7; Order 51 Rule 1 of the Civil Procedure Rules and Section 3A of the *Civil Procedure Act*, seeking orders to set aside the orders made on the 22<sup>nd</sup> July 2024 dismissing the suit for want of prosecution and the reinstatement of the suit for hearing. She also seeks to have the Complaint dated 14<sup>th</sup> June 2024 and filed on 25<sup>th</sup> June 2024 deemed as properly on record as well as costs of the application.
2. The Applicant has advanced the grounds in support of that application that this matter was initially filed as a Constitutional Petition but was transferred to the Civil Division of the High Court for hearing and determination; that this court (Meoli, J) directed the Applicant to convert the Petition into a Complaint, which the Applicant did and filed the Complaint dated 14<sup>th</sup> June 2024 on 25<sup>th</sup> June 2024. That on the 28<sup>th</sup> June 2024, the Applicant sought a hearing date through a letter of the same date. That the Applicant was informed by the Deputy Registrar of the Civil Division through a letter dated 22<sup>nd</sup> July 2024 that the suit was dismissed for failure to file the Complaint within 14 days as ordered by the Court.
3. The Applicant claims through her legal counsel that the advocate who held brief on 7<sup>th</sup> June 2024 did not inform her counsel that the court has given timelines of 14 days within which the Complaint was to



be filed. The Applicants states that failure to comply with the directive of the court to file the Plaintiff within 14 days was not deliberate and ought to be excused.

### **Grounds of Opposition**

4. The 1<sup>st</sup> Respondent filed Grounds of Opposition dated 5<sup>th</sup> March 2025 relying on the Overriding Objective under Section 1A of the *Civil Procedure Act* to facilitate the just, expeditious, proportionate and affordable resolution of the civil disputes governed by the Act and argued that the Applicant has not taken steps to move the case.
5. The Respondent also relied on Order 17 Rule 2(4) of the Civil Procedure Rules on the discretion of the court to dismiss a suit for non-compliance with any directions given by the Court under that Order and argued that the court gave firm and deliberate instructions on 7<sup>th</sup> June 2024 but the Applicant failed to comply.
6. The Applicant cited the inherent powers of the court under Section 3A of the *Civil Procedure Act* and argued that this section gives the court wide discretion over matters before it and urged that the application be dismissed with costs.
7. On 20<sup>th</sup> March 2025, this court issued directions that the Application shall be argued orally on 12<sup>th</sup> May 2025. On that date, Ms Wambua attended court for the Plaintiff/Applicant while Mr. King'ara appeared for the 1<sup>st</sup> Defendant/Respondent. There was no attendance for the 2<sup>nd</sup> Defendant/Respondent. This court directed that the 2<sup>nd</sup> Defendant/Respondent be served with the hearing notice.
8. On the date set aside for the hearing of the Application, Mr. King'ara for the 1<sup>st</sup> Defendant/Respondent attended court, while the Applicant and the 2<sup>nd</sup> Defendant did not attend, wither in person or through there respective counsel. I allowed Mr. King'ara to proceed with oral submissions.
9. Mr. King'ara relied on the Grounds of Opposition dated 5<sup>th</sup> March 2025 as shown in this Ruling and cited *Makokha v Standard Group Limited & 2 others (Civil Suit 32 of 2016)* [2023] KEHC 19215 (KLR) (Civ) (22 June 2023) and Savings and Loans Limited vs. Susan Wanjiru Muritu Nairobi (Milimani) HCCS NO. 397 of 2002 to support his submissions that equity aids the vigilant. It was submitted that the Applicant is not a vigilant litigant. It was submitted that the Applicant had been given five (5) chances to file the Plaintiff but has failed to comply.
10. The 1<sup>st</sup> Respondent urged the court to dismiss the Application arguing that the delay occasioned by the Applicant is prejudicial to the 1s Respondent.

### **Supplementary Affidavit**

11. The Applicant filed a Supplementary Affidavit sworn on 14<sup>th</sup> March 2025. She blames the advocates acting for her who she claims delayed acting in filing the Plaintiff. She deposed that she should not be blamed for the delay because she took action and changed advocates after noting that her former advocates were not acting expeditiously to push the matter forward.
12. She has deposed that counsel who held brief on 7<sup>th</sup> June 2024 did give her counsel full brief that the Plaintiff was to be filed within 14 days and that this was not intentional. She urged the court not to victimize her for mistakes of counsel and that the Respondents do not stand to suffer any prejudice.

### **Analysis and determination**

13. I have considered the Notice of Motion filed herein, the Grounds of Opposition and the Supplementary Affidavit.



14. I took over this matter on 6<sup>th</sup> March 2025. Both the Plaintiff/Applicant and the 1<sup>st</sup> Defendant/Respondent were represented on that day. I directed Mr. King'ara for the 1<sup>st</sup> Defendant/Respondent to serve the Grounds of Opposition on Ms Wambua for the Applicant. I directed Ms Wambua to file Supplementary Affidavit within 7 days and placed the matter down for mention to confirm compliance on 20<sup>th</sup> March 2025.
15. On that date both Ms Wambua and Mr. King'ara were present. Ms Wambua confirmed having filed Supplementary Affidavit. I directed that the Application be argued through oral submissions on 12<sup>th</sup> May 2025 and directed that the 2<sup>nd</sup> Defendant be served with the hearing date.
16. On 12<sup>th</sup> May 2025, Ms Wambua was not present to argue the application. Mr. King'ara was present. This court allowed Mr. King'ara to argue in opposition to the application.
17. I have considered this matter. It is not denied that the Plaintiff/Applicant did not comply with the directions of the court and file Plaint within the timelines set by the court. The Applicant blames her legal counsel for this error and pleads that she should not be punished for mistakes of counsel.
18. It is not lost to me that the Applicant or her legal counsel were not in court on 12<sup>th</sup> May 2025 when this application was canvassed. This is despite the hearing date having been fixed in the presence of Ms Wambua on 20<sup>th</sup> March 2025. This application was not prosecuted and no reasons were provided why counsel did not attend court or instruct another lawyer to hold her brief.
19. While this court sympathizes with the Applicant, it is my view that a case belongs to a litigant and he/she should remain vigilant to ensure that court orders are complied with and that applications filed are prosecuted or defended. In *Savings and Loans Limited vs. Susan Wanjiru Muritu Nairobi (Milimani) HCCS NO. 397 of 2002*, the court has the following to say on that issue:

“Whereas it would constitute a valid excuse for the defendant to claim that she had been let down by her former advocate’s failure to attend court on the date the application was fixed for hearing, it is trite that a case belongs to a litigant and not to her advocate. A litigant has a duty to pursue the prosecution of his or her case. The court cannot set aside dismissal of a suit on the sole ground of a mistake by counsel of the litigant on account of such advocate’s failure to attend court. It is the duty of the litigant to constantly check with her advocate the progress of her case. In the present case, it is apparent that if the defendant had been a diligent litigant, she would have been aware of the dismissal of her previous application for want of prosecution soon after the said dismissal. For the defendant to be prompted to action by the plaintiff’s determination to execute the decree issued in its favour, is an indictment of the defendant. She had been indolent and taking into account her past conduct in the prosecution of the application to set aside the default judgement that was dismissed by the court, it would be a travesty of justice for the court to exercise its discretion in favour of such a litigant.”
20. In view of the fact that the Applicant and her counsel did not attend court on 12<sup>th</sup> May 2025 to prosecute this case and in view of lack of persuading reasons why the orders of the court issued on 7<sup>th</sup> June 2024 were not complied with, I am not persuaded that the application before this court is merited. The Applicant has been indolent and ought not benefit from the orders of this court.
21. Consequently, the Notice of Motion dated 26<sup>th</sup> July 2024 is hereby dismissed with costs to the 1<sup>st</sup> Defendant/Respondent. It is so ordered.

**DATED, SIGNED AND DELIVERED THIS 29<sup>TH</sup> MAY OF 2025**



**S. N. MUTUKU**

**JUDGE**

In the presence of:

1. Ms Wambua for the Applicant
2. Mr. Wachira holding brief for Mr. King'ara for the 1<sup>st</sup> Defendant/Respondent

