



Gabigogo v Board of Directors, Uhai East Africa Sexual Health and Rights Initiative (Uhai Eashri) & 2 others (Civil Suit E077 of 2022) [2025] KEHC 12385 (KLR) (Civ) (4 August 2025) (Ruling)

Neutral citation: [2025] KEHC 12385 (KLR)

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

CIVIL

CIVIL SUIT E077 OF 2022

SN MUTUKU, J

AUGUST 4, 2025

BETWEEN

NOAH MIREMBE GABIGOGO PLAINTIFF

AND

BOARD OF DIRECTORS, UHAI EAST AFRICA SEXUAL HEALTH AND RIGHTS INITIATIVE (UHAI EASHRI) 1ST DEFENDANT

UHAI EAST AFRICAN SEXUAL HEALTH RIGHTS INITIATIVE (UHAI EASHRI) 2ND DEFENDANT

DR. STELLAH WAIRIMU BOSIRE 3RD DEFENDANT

RULING

1. This ruling relates to a verbal application by the defendants, through their respective counsel, made on 23rd June 2025, seeking dismissal of the Plaintiff's suit for want of prosecution and non-attendance by the Plaintiff.
2. This court, Meoli, J, through a ruling delivered on 31st January 2024 directed the Plaintiff to amend his Plaint in order to bring it under the ambit of Order 2 Rule 7(1) of the Civil Procedure Rules. This was to be done within 14 days from the date of that ruling. I have noted that the Plaintiff complied with the court's directions and filed an amended plaint dated 14th February 2024.
3. On 2nd December 2024, the court, Meoli J, directed that this matter shall be placed before the incoming Presiding Judge on 28th March 2025 for determination. These directions were given in chambers in the absence of any of the parties. The matter was brought to my attention on 26th March 2025 instead of 28th March 2025 as earlier directed. The 1st and 2nd defendants were represented by Ms Ogotu while the 3rd defendant was represented by Mr. Pravin Odipo. I noted the absence of the Plaintiff or counsel and



- directed that he be served. I fixed the matter for hearing on 22nd May 2025 on which date the Plaintiff or counsel were not present. Mr. Gichuhi for the 1st and 2nd defendants told the court that he had served the Plaintiff through his counsel but had not filed an affidavit of service.
4. I adjourned the matter to 23rd June 2025 and directed service of the hearing notice to the Plaintiff. On 23rd June 2025, the Plaintiff or counsel were not present. Mr. Gichuhi informed the court that he had served the Plaintiff and filed an affidavit of service. He asked the court to dismiss the Plaintiff for the reason that the Plaintiff was not interested in prosecution the suit. Mr. Odipo agreed with Mr. Gichuhi on the application to have the suit dismissed for want of prosecution and non-attendance of the Plaintiff.
 5. I have considered this matter. The record shows that the Plaintiff has not been attending court on the dates the matter was listed for hearing from the time this matter was placed before me. This court was hesitant to take any action against the Plaintiff until there was evidence of service of the hearing notice to him or his counsel. There is on record an affidavit of service dated 20th June 2025. It is sworn by Mr. Kenneth Gichuhi, advocate. The hearing notice is dated 23rd May 2025 and it was served on 23rd May 2025 at 15:12pm through litigation@mitullahshakolaw.com.
 6. This court has no reason to doubt that service of the hearing notice was properly done. I also take note that a litigant ought to be vigilant at all times, especially during the current information technological dispensation when every court process is accessible through CTS. From the time the Plaintiff filed his amended Plaintiff dated 14th February 2024 to the time this matter was placed before me on 26th March 2025, it was slightly over one year. Any vigilant litigant would have been curious to find out the status of his case, even if he was not served with any hearing notice, which is not the case here.
 7. Order 12 rule 3 (1) of the Civil Procedure Rules provides that:

“If on the day fixed for hearing, after the suit has been called on for hearing outside the court, only the defendant attends and he admits no part of the claim, the suit shall be dismissed except for good cause to be recorded by the court.”
 8. Further, Order 17 rule 3 provides that:

“Where, on any day to which the hearing of the suit is adjourned, the parties or any of them fail to appear, the court may proceed to dispose of the suit in one of the modes directed in that behalf by Order 12, or make such other order as it thinks fit.”
 9. I am guided by the constitutional guiding principle that justice shall not be delayed and 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. I am also alive to the fact that dismissing a suit is discretionary and I am satisfied that the Plaintiff has slept on his rights in failing to prosecute this matter. I am aware he is represented by counsel but a case belongs to a party not his/her counsel and constant engagement with his counsel would ensure that a case does not become dormant.
 10. I am persuaded that the Plaintiff has lost interest in this case given the amount of time from the date he and/or his counsel were last in attendance in court. I am satisfied that the Plaintiff was properly served through his counsel but failed to attend court. I am also satisfied that the Plaintiff and his counsel have failed to follow up on the status of the case.
 11. For the above reasons, I agree with the defendants that the Plaintiff has lost interest in this case and hereby dismiss the amended plant dated 14th February 2024 for non-attendance and want of prosecution. I award costs to the defendants.



12. It is so ordered.

DATED, SIGNED AND DELIVERED THIS 4TH AUGUST 2025.

S. N. MUTUKU

JUDGE

In the presence of:

No attendance for the Plaintiff

No attendance for the 1st and 2nd Defendants

Ms Lynne Wanjiru for Mr. Odipo for the 3rd Defendant

