



**Maiyo v Kiptum & another (Civil Suit E008 of 2024)  
[2025] KEHC 11546 (KLR) (4 August 2025) (Ruling)**

Neutral citation: [2025] KEHC 11546 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
CIVIL SUIT E008 OF 2024  
RN NYAKUNDI, J  
AUGUST 4, 2025**

**BETWEEN**

**PHILEMON KIPKEMBOI MAIYO ..... PLAINTIFF**

**AND**

**ELIAS KIPTUM ..... 1<sup>ST</sup> DEFENDANT**

**INVESCO ASSURANCE COMPANY LTD ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. The Application dated 16<sup>th</sup> July 2024 was duly heard and determined on 25<sup>th</sup> October 2024 to pave way for hearing of the declaratory suit. The Plaintiff has failed to take any steps in compliance with Order 11 of the Civil Procedure Rules to fast track the hearing and determination of the suit which copy of the Plaint is not even in the file. There have been several mentions in this matter with no evidence of the Plaintiff moving the Court appropriately. It is clear from the record during the status conference, the intended suit was dismissed for non-attendance and want of prosecution. I hereby take the liberty to publish the ruling of this court.

**Decision**

2. The Civil Procedure Rules set out clear timelines for the initiation of suits, which should not be violated at will or whimsically. Where there is indolence on the part of a litigant-specifically the plaintiff, claimant, petitioner, or applicant-the court must invoke Order 17 of the Civil Procedure Rules, as read with Sections 1A, 1B, 3, and 3A of the Civil Procedure Act, to dismiss the suit for want of prosecution.
3. In exercising its discretion, the Court is guided by certain principles aimed at ensuring that the trial of a suit, claim, or petition begins and is concluded within a reasonable time. A key consideration is that a suit may be dismissed for want of prosecution if the delay is both prolonged and inexcusable. This means that the delay must be significant and without a justifiable reason from the party responsible for prosecuting the case. In evaluating the facts, the Court must also consider whether, despite the



delay, justice can still be achieved for both the plaintiff and the defendant. The court in *Ivita vs Kyambu* (1984) KLR 441 held as follows:

“So the test is whether the delay is prolonged and inexcusable, and. If it is, can justice be done despite such delay. The defendant must satisfy the court that he would be prejudiced by the delay, or even that the plaintiff will be prejudiced. He must show that justice will not be done in the case due to the prolonged delay on the part of the plaintiff before the court will exercise its discretion in his favor and dismiss the action for want of prosecution.....where the defendant satisfies the court that there has been prolonged delay and the plaintiff does not give sufficient reason for the delay the court will presume the delay is not only prolonged but it is also inexcusable....”

4. This court on 25<sup>th</sup> October 2024 ruled as follows:

a. In summation, applying the provisions of Order 42 Rule 6(1) of the CPR and the principles in the above authorities, there are high chances that if the execution process against the Plaintiff/Applicant is not stayed, the declaratory suit will be rendered nugatory. As the decided cases suggest, I exercise discretion in the circumstances of this case to grant stay of execution of the decree arising out of Small Claims Court No. 232 & 235 of 2023 pending the hearing and determination of the suit. In the alternative, the Plaintiff/Applicant be at liberty to provide and undertaking for the payment of the decretal sum in the form of a bank guarantee as a condition to have his motor vehicle released so as to continue realizing the economic rights which accrue from the public transport services offered by the aforesaid motor vehicle.

b. The costs of the application to abide the outcome of the suit.

5. Upon perusal of the record, it is evident that the Plaintiff has not demonstrated diligence or seriousness in prosecuting the claim before this Court since the last directions were issued. For all those months, the Plaintiff has failed to provide any sufficient cause to justify keeping this case active on the court’s docket as a claim capable of being prosecuted against the Defendant. Accordingly, the suit is dismissed for want of prosecution. Any interlocutory applications or intended suits are similarly dismissed, with no orders as to costs.

**GIVEN UNDER MY HAND AND SEAL OF THIS COURT THIS 4<sup>TH</sup> AUGUST 2025**

.....

**R. NYAKUNDI**

**JUDGE**

