



**Star Tours and Travel Limited v Chege & another (Civil Case  
166 of 2017) [2024] KEHC 351 (KLR) (Civ) (26 January 2024) (Ruling)**

Neutral citation: [2024] KEHC 351 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CIVIL  
CIVIL CASE 166 OF 2017  
AN ONGERI, J  
JANUARY 26, 2024**

**BETWEEN**

**STAR TOURS AND TRAVEL LIMITED ..... APPLICANT**

**AND**

**KENNEDY GICHUHA CHEGE ..... 1<sup>ST</sup> RESPONDENT**

**BEBONAIR TRAVEL LIMITED ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. The application coming for consideration in this ruling is dated 26/6/2023 seeking the following orders;
  - i. That this application be certified urgent and be heard *ex-parte* in the first instance.
  - ii. That there be stay of execution of the judgment entered on 2<sup>nd</sup> May, 2023 and the resulting decree, pending the hearing and determination of this application inter-parties and/or further orders of the court.
  - iii. That this honourable court be pleased to set aside its orders of dismissal made on the 4<sup>th</sup> November 2021 and reinstate this suit to be heard and determined on merit.
  - iv. That costs of this application be in the cause.
2. The application is based on the grounds on the face of it as follows;
  - i. That the plaintiff's former then advocates despite been duly informed of the intention to dismiss the suit for want of prosecution failed to attend court.



- ii. That the order of dismissal made on 4<sup>th</sup> November 2021 was made through no fault or wrongdoing on the part of the applicant but through the fault of the advocates previously on record for the plaintiff.
- iii. That the applicant has at all material times in this suit been diligent in prosecuting the said suit and the mistake leading to the dismissal of the same can neither be attributed to them as they were not duly notified to show cause why the suit should not be dismissed by their then former advocates on record.
- iv. That the applicant stand to be greatly prejudiced should the suit herein not be reinstated.
- v. That in the interest of justice and fairness that this honourable court exercises its discretion in favour of the applicant and set aside the order for dismissal of the suit and reinstates the same for determination on merit as the applicant has a triable case.
- vi. That the application herein is made in good faith, promptly and without undue delay.

And supported by the affidavit of Joan Ngugi sworn on 27/6/2023.

3. The respondents filed a replying affidavit sworn on 21/9/2023 opposing the application in which it is deposed that before the suit was dismissed for want of prosecution, the suit was last in court on 11<sup>th</sup> December 2018 for a ruling on the plaintiff's/applicant's application to strike out the defendants'/respondents' statement of defence and the said application was dismissed and thus when the suit came up for dismissal for want of prosecution, there was a lull or indolence on the plaintiff's/applicant's part for almost two years.
4. That upon dismissal of the suit for want of prosecution on 25<sup>th</sup> November, 2021, that the Applicant filed a party and party bill of costs dated 24<sup>th</sup> November 2021 and the same was served upon the plaintiff's/applicant's advocates on record on 22<sup>nd</sup> September, 202 together with a Notice of Taxation dated 20<sup>th</sup> September, 2022. Annexed hereto and collectively marked "A" are copies of the Party and Party Bill of Costs dated 24<sup>th</sup> November, 2021 and the Notice of Taxation dated 20<sup>th</sup> September, 2022.
5. That the Party to Party Bill of Costs came up for taxation on 27<sup>th</sup> September, 2022 and in the absence of the plaintiff's/applicant's advocates, a ruling on the bill of costs was reserved for 24<sup>th</sup> November, 2022.
6. That on 24<sup>th</sup> November 2022, the party and Party Bill of Costs was taxed at kshs.238,699/= and a certificate of taxation issued on 6<sup>th</sup> December 2022. Annexed hereto and marked "B" is a certificate of taxation dated 6<sup>th</sup> December, 2022.
7. That by a letter dated 7<sup>th</sup> December, 2022 the Applicant forwarded the certificate of taxation to the applicant's/plaintiff's advocates on record requesting the said advocates to pay the Party and Party Bill of Costs within 7 days. Annexed hereto and marked "C" is a copy of the letter dated 7<sup>th</sup> December, 2022.
8. That since no payment was forthcoming from the plaintiff/applicant, the Applicant filed the notice of motion dated 26<sup>th</sup> January, 2023 and served upon the plaintiff's/applicant's advocates on 8<sup>th</sup> February, 2023. Annexed hereto and marked "D" is a copy of the application dated 26<sup>th</sup> January, 2023.
9. That the plaintiff has been indolent, is guilty of laches and is undeserving of the remedies sought.
10. That the defendants' respondents' will be gravely prejudiced if the suit is reopened since the Applicant has information the the 2<sup>nd</sup> Defendant has lost touch with his potential witnesses and has no way of tracing or contacting them.



11. That even though the plaintiff/applicant has deponed that there was a mistake from its previous advocates on record, the plaintiff/applicant does not depone on the nature and extent of the mistake and the said advocates have not sworn an affidavit to explain themselves and this averment is clearly an afterthought.
12. The parties filed written submissions which I have duly considered.
13. The sole issue for determination is whether the suit should be reinstated for hearing.
14. I find that the court has a discretion to reinstate a suit dismissed upon certain conditions.
15. I find that it is not in dispute that the plaintiff was not aware that the suit had been dismissed.
16. It is not in the interest of justice to punish a party for the mistake of their counsel.
17. I find that the respondents will not suffer prejudice that cannot be compensated by an award of costs.
18. I allow the application dated as 26/6/2023 on the following conditions;
  - i. That the applicant pays thrown away costs of ksh.20,000 before the suit is set down for hearing.
  - ii. That the suit be fully prosecuted within 90 days of this date.
  - iii. Failure to prosecute the suit within the stated period, the same to stand automatically dismissed with costs to the respondents.

**DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 26<sup>TH</sup> DAY OF JANUARY, 2024.**

**A. N. ONGERI**

**JUDGE**

In the presence of:

..... for the Applicant

..... for the 1<sup>st</sup> Respondent

..... for the 2<sup>nd</sup> Respondent

