



**Kenya Alliance Insurance Co Ltd v Kinuthia (Civil Suit
12 of 2019) [2024] KEHC 1311 (KLR) (25 January 2024) (Ruling)**

Neutral citation: [2024] KEHC 1311 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CIVIL SUIT 12 OF 2019
DO CHEPKWONY, J
JANUARY 25, 2024**

BETWEEN

KENYA ALLIANCE INSURANCE CO LTD PLAINTIFF

AND

WILLY MUIRU KINUTHIA DEFENDANT

RULING

1. On 18th October, 2023, the court issued Notice of Show Cause to the Plaintiff's Advocates, M.W.Muli & Co Advocates why the suit should not be dismissed for want of prosecution.
2. In response, the Plaintiff's Advocate filed Replying Affidavit which was sworn by Dorry Wamugo, an Advocate of the High Court of Kenya representing the Plaintiff on 17th November, 2023.
3. In the Affidavit, the Plaintiff states that Judgment was delivered in the suit on 1st July, 2021 whereby the suit was dismissed with costs for the reason that it had failed to produce a copy of the insurance policy. Subsequently, the Plaintiff filed an application dated 5th October, 2021 seeking to have the Decree of the court which was given a hearing date of 17th March, 2022 reviewed.
4. That on the day of 17th March, 2022, the court gave a further hearing date of 20th July, 2022 to allow for a perusal of the file to confirm whether or not the said policy document was on the file. On 20th July, 2022 the court was not sitting and the matter was mentioned before the Deputy Registrar who granted the Plaintiff leave to amend the Notice of Motion application dated 5th October, 2021 and gave a Mention date for 14th November, 2022 to confirm compliance.
5. The Plaintiff holds that it complied with the court's directions and filed an Amended Notice of Motion application dated 21st July 2022, which was given a hearing date of 16th February, 2023 before the Judge but on that day the court was not sitting. Then they logged onto court's online platform and got a



new hearing date of 15th May, 2023 on which date the court was on leave and a new date of 19th July, 2023 was given.

6. The Plaintiff contends that on 19th July, 2023 the court file was not availed as the e-filing system was being launched at the court, the following day 20th July 2023, thus, a new date of 21st September, 2023 was given but on which date the Plaintiff's advocate unable to log in due to internet challenges. It is stated that on 26th September, 2023 the Plaintiff wrote to the court seeking to have another date and they were served with Notice to Show Cause dated 18th October, 2023.
7. The Plaintiff has then urged the court to set aside the Notice to Show Cause and give a new date of the hearing of the Amended Notice of Motion dated 21st July, 2022.
8. In considering whether or not to dismiss the suit for want of prosecution, I have also read through the record of proceedings and find that the reasons given by the Plaintiff have been sufficiently explained and the Notice to Show Cause he and is hereby set aside. The said Amended Notice of Motion application to be fixed for hearing on a priority basis.

It is so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 25TH DAY OF JANUARY, 2024.

D. O. CHEPKWONY

JUDGE

In the presence of:

No appearance for and by either party

Court Assistant - Martin

