



**Chege v Estate of Joseph Ndungu Njoroge (Deceased) through trustees
Dorothy Wanjiku Njoroge & 2 others (Environment & Land Case
628 of 2013) [2023] KEELC 704 (KLR) (10 February 2023) (Ruling)**

Neutral citation: [2023] KEELC 704 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE 628 OF 2013
A OMBWAYO, J
FEBRUARY 10, 2023**

BETWEEN

JOSECK GITUMA CHEGE PLAINTIFF

AND

**ESTATE OF JOSEPH NDUNGU NJOROGE (DECEASED) THROUGH
TRUSTEES DOROTHY WANJIKU NJOROGE 1ST DEFENDANT
MATHEW KAMAU NJOROGE 2ND DEFENDANT
KEFAH NJUNGE NJOROGE 3RD DEFENDANT**

RULING

1. Joseck Gituma, Samuel Chege has made an application to this court seeking orders that this matter be re-instated .
2. The suit was dismissed for want of prosecution. The reason for non-attendance for the notice to show cause why the suit should not be dismissed were not given.
3. The application is made through his counsel Aggrey Simiyu. The plaintiff himself has not sworn affidavit to support the application. Order 17 rule 2 of the *Civil Procedure Rules 2010* provides:-
 2. Notice to show cause why suit should not be dismissed [order 17, rule 2.]
 1. In any suit in which no application has been made or step taken by either party for one year, the court may give notice in writing to the parties to show cause why the suit should not be dismissed, and if cause is not shown to its satisfaction, may dismiss the suit.



2. If cause is shown to the satisfaction of the court it may make such orders as it thinks fit to obtain expeditious hearing of the suit.
 3. Any party to the suit may apply for its dismissal as provided in sub-rule 1.
 4. The court may dismiss the suit for non-compliance with any direction given under this order.
 5. A suit stands dismissed after two years where no step has been undertaken.
4. A party may apply to court after dismissal of a suit under this order.
 5. The court, litigants and advocates should strive to ensure that matters are concluded expeditiously without inexcusable delay. Sections 1A and 1B, of the *Civil Procedure Act*, cap 21, Laws of Kenya, are relevant, with regard to this and they state as follows:

“ 1A. Objective of act

- (1) The overriding objective of this act and the rules made hereunder is to facilitate the just, expeditious, proportionate and affordable resolution of the civil disputes governed by the act.
- (2) The court shall, in the exercise of its powers under this act or the interpretation of any of its provisions, seek to give effect to the overriding objective specified in subsection (1).
- (3) A party to civil proceedings or an advocate for such a party is under a duty to assist the court to further the overriding objective of the Act and, to that effect, to participate in the processes of the court and to comply with the directions and orders of the court.

1B. Duty of court

- (1) For the purpose of furthering the overriding objective specified in section 1A, the court shall handle all matters presented before it for the purpose of attaining the following aims—
 - (a) the just determination of the proceedings;
 - (b) the efficient disposal of the business of the court;
 - (c) the efficient use of the available judicial and administrative resources;
 - (d) the timely disposal of the proceedings, and all other proceedings in the court, at a cost affordable by the respective parties; and
 - (e) the use of suitable technology.”
6. Section 3A of the *Civil Procedure Act* gives the court wide discretion over matters and issues that are before it, including the question as to whether it should or should not reinstate a suit dismissed on account of unreasonable delay on the part of the parties to prosecute it. Section 3A reads:

“ 3A. Saving of inherent powers of court. Nothing in this Act shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.”



7. In *Ivita v Kyumbu [1984] KLR 441* (Chesoni J), on reinstatement of suit stated:

“The test is whether the delay is prolonged and inexcusable, and, if it is, can justice be done despite such delay. Justice is justice to both the plaintiff and defendant; so both parties to the suit must be considered and the position of the judge too, because it is no easy task for the documents, and, or witnesses may be missing and evidence is weak due to the disappearance of human memory resulting from lapse of time. The defendant must however satisfy the court that it will 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 favour and dismiss the action for want of prosecution. Thus, even if delay is prolonged if the court is satisfied with the plaintiff’s excuse for the delay, the action will not be dismissed, but it will be ordered that it be set down for hearing at the earliest available time.”

8. *Ivita v Kyumbu [1984] KLR 441* (Chesoni J) was followed in *Jim Rodgers Gitonga Njeru v Al-Husnain Motors Limited & 2 others [2018] eKLR* (Muchemi J), where the court said:

“It is my view that such would be valid considerations in an application for dismissal of suit for want of prosecution, which in this case has already been done; and it is manifest from the record that the reason why the suit was dismissed in the first place was that the Court was satisfied there was inordinate delay of 3 years for which there was no explanation.”

9. In *James Mwangi Gathara & another v Officer Commanding Station Loitoktok & 2 others [2018] eKLR* (Nyakundi J), the court said:

“Before I conclude this matter, I need to bring to the attention of the plaintiff the manner in which he is pursuing his rights. In my view the proceedings in this claim seems to be focusing on interlocutory applications without addressing the main dispute which brought the parties to court in the first instance. It is time the plaintiff decides categorically whether he has a claim to be heard on the merits or continuous slumbering only to rise up when he has been stripped of certain rights during the adjudication processes. In my assessment and based on the history of this case the plaintiff is guilty of laches. I think I have said enough on this point.”

10. Reinstatement of a suit is at the discretion of the court, which discretion ought to be exercised judiciously, as was held in *Bilba Ngonyo Isaac v Kembu Farm Ltd & another & another [2018] eKLR* ((JN Mulwa J), which echoed the decision of the court in *Shah v Mbogo & Another (1967) EA 116* (Harris J), where the court stated on the matter of discretion:

“The discretion is intended so as to be exercised to avoid injustice or hardship resulting from inadvertence or excusable mistake or error but is not designed to assist a person who has deliberately sought whether by evasion or otherwise to obstruct or delay the course of justice.”

11. There is need for expeditious conclusion of suits. In *Mobile Kitale Service Station v Mobil Oil Kenya Limited & another [2004] eKLR* (Warsame J) where it was held:

“I must say that the courts are under a lot of pressure from backlogs and increased litigation, therefore it is in the interest of justice that litigation must be conducted expeditiously and efficiently so that injustice caused by delay would be a thing of the past. Justice would be



better served if we dispose matters expeditiously. Therefore, I have no doubt the delay in the expeditious prosecution of this suit is due to the laxity, indifference and/ or negligence of the plaintiff. That negligence, indifference and/or laxity should not and cannot be placed at the doorsteps of the defendant. The consequences must be placed on their shoulders.”

12. I have considered the application and do find no sufficient reasons for reinstating the suit. The applicant has not sworn any affidavit to demonstrate that he is interested to pursuing the dispute. Moreover he has not explained the inaction between October 31, 2018 and February 24, 2021 when the suit was dismissed for want of prosecution a period of approximately two years. Further he has not explained the indolence between February 24, 2021 and January 24, 2023 when he filed the application for re-instatement. The application lacks merit and is dismissed.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 10TH DAY OF FEBRUARY 2023.

A O OMBWAYO

JUDGE

