



**In re Baby A alias AP (Adoption Cause E041 of 2023)
[2024] KEHC 15456 (KLR) (Family) (26 June 2024) (Judgment)**

Neutral citation: [2024] KEHC 15456 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
ADOPTION CAUSE E041 OF 2023
EKO OGOLA, J
JUNE 26, 2024
IN THE MATTER OF ADOPTION OF BABY A ALIAS BABY AP
LNW**

**IN THE MATTER OF
LNW APPLICANT**

JUDGMENT

1. The application before the court is dated 3rd November 2023. The applicant prays for the following orders:-
 - a. Spent;
 - b. That the order of this honorable court made on 31st October 2023 dismissing the suit be reviewed varied and or set aside and that consequently the Originating Summons herein filed on 22nd March 2023 be and is hereby reinstated;
 - c. That the honorable court be pleased to reinstate all the proceedings and the orders in the matter;
 - d. That the cost of this application be provided for.
2. The application was based on the grounds set out therein and the supporting affidavit of Lucy Wanjiru Gicheha, the applicant’s counsel on record. Ms. Gicheha deposed that she experienced device challenges while logging into the virtual court, consequently, the application was dismissed for non-attendance.
3. I have considered the application and the affidavit on record. The only issue for me to determine is whether this suit ought to be reinstated.



4. The Article 159 of *the Constitution* stipulates the necessity for the expeditious conclusion of cases. It is the duty of the court, litigants, as well as advocates, to ensure that matters are concluded expeditiously without inexcusable delay. Sections 1A and IB, of the *Civil Procedure Act*, Cap 21, Laws of Kenya, are relevant, with regard to this.

5. The factors taken into account for consideration for the purpose of reinstatement of suits are numerous, and were addressed in *Ivita vs. Kyumbu* [1984] KLR 441 where the court 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.”

6. In this instant case, the court on 31st October 2023 dismissed the suit for want of prosecution. This application was filed three days later. There was no inordinate and prolonged delay. Furthermore, if the suit is not reinstated, the litigant will suffer loss from her counsel’s faults.

7. Order 12 Rule 7 of the Civil Procedure Code states that:-

“Where under this Order judgment has been entered or the suit has been dismissed, the court, on application, may set aside or vary the judgment or orders upon such terms as may be just.”

8. Reinstatement of a suit is at the discretion of the court, which discretion ought to be exercised justly. 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 of matters expeditiously.

9. The upshot is that the suit is reinstated. The Deputy Registrar Family Division is hereby directed to allocate this matter a date for hearing as a matter of priority.

Orders accordingly.

DATED AND DELIVERED AT NAIROBI THIS 26TH DAY OF JUNE 2024

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E.K. OGOLA

JUDGE

In the presence of:

Ms. Gicheho for the Applicant

Gisiele Muthoni Court Assistant

