



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CIVIL DIVISION**

**HIGH COURT CIVIL CASE NO. 232 OF 2016**

**JOHN MITHAMO WASUSANNA.....PLAINTIFF/RESPONDENT**

**VERSUS**

**NDIMA TEA FACTORY CO. LIMITED.....DEFENDANT/APPLICANT**

**RULING**

1. The application dated 1/4/2021 seeks orders that **the Honourable court be pleased to dismiss this suit for want of prosecution.**
2. It is stated in the grounds on the face of the application and in the affidavit in support that the Plaintiff has failed to set down the case for hearing. That the Plaintiff is not keen on prosecuting the suit. That the prolonged delay herein is inexcusable and prejudicial to the Defendant who is incurring unnecessary costs keeping vigil over the matter.
3. In the grounds of opposition dated 18/6/2021, it is stated that;
  1. **The plaintiff is still desirous of prosecuting the suit herein not being able to do so in the past on account of the Covid-19 Pandemic that has been ongoing for the past almost one year and half.**
  2. **In light of Article 159 of the Constitution of Kenya 2010 the practice has been to elevate substantial justice to the parties over and above the strictures of rules of procedure, which have been stated to be mere hand maidens of justice and in view of the provisions under sections 1A, 1B and 3A of the Civil Procedure Act.**
  3. **Despite the pendency of this suit before this Honourable Court there have been developments in the matter in that the Plaintiff was elected as the chairman of the board of directors.**
  4. **The administration of justice should normally require that the substance of all disputes should be investigated and decided on their merits and that error and lapses should not necessarily debar a litigant from the pursuit of his rights.**
  5. **The application is frivolous, vexatious, bad in law and an abuse of court process and ought to be disallowed.**
4. I have perused the court record. In the ruling herein dated 2/11/2018, the Plaintiff's application seeking injunctive orders was dismissed with costs. Subsequent to the said ruling, the Plaintiff has not taken any steps in this suit. It is apparent that the Plaintiff has lost interest in this matter. The averments of fact in the Defendant's affidavit remain uncontroverted by any other evidence. The delay is unexplained.
5. In the upshot, I allow the application with costs of the suit to the Defendant.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 29<sup>TH</sup> DAY OF JULY, 2021**

**B.THURANIRA JADEN**

**JUDGE**