

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL DIVISION

HIGH COURT CIVIL CASE NO. 505 OF 2012

DR. PETER KAMAU NJOROGHE.....PLAINTIFF/APPLICANT

VERSUS

CAROLINE WAGUTHI NDINDI.....1ST DEFENDANT/RESPONDENT

ANTHONY THOMAS NGOKONYO.....2ND DEFENDANT/RESPONDENT

CHARWINS LIMITED.....3RD DEFENDANT/RESPONDENT

RULING

1. On 2/6/2020, this case came up for the hearing of the Notice to Show Cause why it should not be dismissed for want of prosecution.
2. The affidavit filed by the Plaintiff's counsel showing cause why the suit should not be dismissed blames the delay herein on the mix up of files during relocation and renovation of the Advocate's office. The Plaintiff also filed an affidavit in which he stated that he had been following up on the progress of his case and was aware of the mix up of the files. He expressed keen interest in the suit.
3. The Defendants filed an affidavit in support of the dismissal. Referring to the background facts of the case, the Defendants stated the Plaintiff has since vacated the suit premises and has lost interest in the matter, hence the delay. That the delay of eight years in the prosecution of this case is inexcusable, an abuse of the process of the court and prejudicial to the Defendants.
4. I have perused the court record. The case remained active in court during the hearing of the Interlocutory application. The suit was certified ready to proceed to hearing on 11/10/2018. By the time the Notice to Show Cause was served, the suit had stalled for about two years.
5. The Plaintiff has however shown interest in prosecuting the suit. This court accepts the explanation for the delay and is not inclined to visit the mistakes of the Advocate on the Litigant. Consequently, I allow the application on condition that the case is fixed for hearing within 90 days from the date hereof. In default the cause to stand dismissed with costs to the Defendants.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 28TH DAY OF JULY, 2021

B.THURANIRA JADEN

JUDGE