

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT VIHIGA

CIVIL SUIT NO. 5 OF 2021

WILSON COMMERNDER MADASIA.....PLAINTIFF

VERSUS

KTDA MANAGEMENT SERVICES LIMITED.....1ST DEFENDANT

MUDETE TEA FACTORY LIMITED.....2ND DEFENDANT

JAVAN M. MUKAVALE.....3RD DEFENDANT

RULING

1. The Motion, dated 7th September 2020, by the 3rd defendant, seeks dismissal of the instant suit for want of prosecution. It is averred that since 21st June 2018, when a ruling was delivered herein, no action had been taken by the plaintiff hence the Motion..
2. The defendant, by way of response, says that he instructed his Advocates to file appeal. The said Advocates then wrote a letter to court, asking for proceedings. The letter is dated 22nd June 2018. He says that that was the last time he heard from them. He then instructed another firm of Advocates, who placed a notice of change of Advocates in court on 16th October 2019, but still took no step.
3. The record before me is clear, that the last substantive step in this matter was delivery of the ruling on 18th June 2018. Since then no step has been taken to advance the matter. Requesting for proceedings, which request is not followed up thereafter, and filing a notice of change of Advocates and then going back to sleep are not adequate. The plaintiff has clearly lost interest in the matter. Between 18 June 2018 and 12th October 2020, when the Motion was lodged in court, is some twenty-four months, or nearly two years and a half. A party keen on prosecuting their suit ought to have taken some decisive step to move the case forward.
4. There is a clear case for want of prosecution. Consequently, I am persuaded that there is merit in the Motion, dated 7th September 2020, and I allow the same. The suit is hereby dismissed. The 3rd defendant shall have the costs.

**DATED, SIGNED AND DELIVERED IN OPEN COURT AT KAKAMEGA THIS26th DAY OF
.....NOVEMBER....., 2021**

W. MUSYOKA

JUDGE