



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

CIVIL APPEAL NO. 106 OF 2005

JANE W. KARITHI.....PLAINTIFF

VERSUS

DAVID M. MUITA.....1ST DEFENDANT

JOYCE THANJI MUITA.....2ND DEFENDANT

RULING

1. This is a ruling on Notice to show why this suit should not be dismissed for want of prosecution. The notice was issued at the instance of the court to the parties herein on 7th June 2017. The matter was listed before court on 26th June 2017.
2. Counsel for the plaintiff **Nancy Wanjiku Njoroge** filed replying affidavit dated 28th June 2018 in response to notice to show cause.
3. The notice to show cause never proceeded as schedule on ground that the defendant was not served. The matter was scheduled for 28th January 2019 when the court was informed that the defendant had been served by substituted service.
4. The plaintiff relied on affidavit dated 28th June 2018 in urging the court not to dismiss this suit. Counsel informed court that all witness statements and documents have been filed and that the suit is ready for hearing.
5. On perusal of affidavit in response to notice to show cause, I note that reason attributed for delay by plaintiff is confusion on her part as to who was acting for the plaintiff. She also cite existence of other matters involving family member as having contributed to the confusion. She attached plaints for three matters to confirm that.

ANALYSIS AND DETERMINATION

6. On perusal of the court record, I note this matter has been pending since the year 2005. The last action by parties herein before issuance of notice to show cause was 16th July 2014. On that date, counsel for the plaintiff sought for a date for hearing of an application dated 26th May 2014 by firm of **Mutonyi Mbiyu** seeking to cease acting. I do not understand how she confused representation of plaintiff. No basis for confusion has been demonstrated by counsel for the plaintiff.
7. Plaintiff has not taken steps to prosecute this matter for over four years now. If the plaintiff had interest in prosecuting this matter, she would have sought updates from her Advocates.
8. I have however perused the plaint and in view of prayers sought, I find that it would be in the interest of justice to allow the plaintiff an opportunity to prosecute this matter so that final determination may be reached on issues between parties herein.
9. From the foregoing, I do discharge notice to show case on condition that the plaintiff takes steps to prosecute this matter within 30 days from date of delivery of this ruling
10. I also note from plaint that this matter falls under Environment and Land Court (ELC) and proceed to transfer it to that court. Deputy Registrar to give parties a mention date before ELC.

Ruling Delivered, Dated and signed at Nakuru this 27th Day of February 2019

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RACHEL NGETICH

JUDGE

In the presence of:-

Schola Wangui - Court Assistant

Nancy Njoroge Advocate - Counsel for Plaintiff

Mutonyi Mbiyu Advocate - Counsel for Defendant