



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL SUIT NO. 276 OF 2012

NATIONAL SOCIAL SECURITY FUND.....PLAINTIFF

-VERSUS-

THOMAS MONGARE ONGAGA.....1ST DEFENDANT

JOYCE KEMUNTO MONGARE.....2ND DEFENDANT

R U L I N G

1. The parties to this case were issued with notices to show cause on 20th June, 2019 requiring them to offer an explanation as to why the suit ought not to be dismissed for want of prosecution.
2. In response thereto, *Kennedy Modi*, advocate for the plaintiff, urged this court to refer to his affidavit sworn on 17th March, 2018 with respect to a previous notice to show cause issued on 7th March, 2018.
3. Therein, the deponent stated in summary that the associate who had been instructed to ensure prosecution of the suit did not comply and has since left the firm of advocates, further stating that it is only upon being served with the initial notice to show cause on 14th March, 2018 that the deponent came to learn of the inaction in the matter.
4. I have taken the above facts into account. The record discloses that the suit was filed on 6th June, 2012. Thereafter, the plaintiff's advocate took out summons to enter appearance and sought to effect service of the same upon the defendants, going further to lodge an application for extension of time for the validity of the said summons. The record shows that the application was granted by the court on 15th December, 2014.
5. It is also evident from the record that an affidavit of service was subsequently filed on 8th July, 2016 thereby confirming that service had been effected. It followed that the defendants did not enter appearance and/or file a defence, prompting the plaintiff to request for the entry of interlocutory judgment on that basis.
6. Going by the record, the court entered interlocutory judgment as prayed on 10th August, 2016 further directing that the matter proceeds for formal proof. Since then, no steps have been taken in prosecuting the suit.
7. Judging by the averments made in the affidavit, it is noted that the plaintiff's advocate has admitted to being at fault albeit indirectly through the inadvertence of his former employee. The courts have stated and restated on various occasions that the mistakes of counsel ought not to be visited on the respective client as a matter of principle. That notwithstanding, it was just as much if not considerably the responsibility of the plaintiff to proactively ensure the prosecution of its case; there is no indication that this was at all done, thereby raising deep concerns given that this is a relatively old matter.
8. On the flip side, I am well aware that the suit was to proceed by way of formal proof. The plaintiff's advocate admittedly failed it to some extent. That being the position, I will exercise my discretion in giving the plaintiff the benefit of the doubt.
9. Ultimately, the plaintiff is granted a last chance to prosecute its case within 20 days from today, failing which the same shall stand dismissed without the hope of revival.

Dated, signed and delivered at NAIROBI this 30th day of July, 2019

.....

L. NJUGUNA

JUDGE

In the presence of:

.....for the Plaintiff

..... for the Defendants