

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO. 74 OF 2014

TED NJAU NJOGU.....PLAINTIFF

-VERSUS-

THE STANDARD GROUP LIMITED.....DEFENDANT

R U L I N G

1. This ruling was prompted by the notice to show cause issued on 6th June, 2019 requiring the parties herein to show cause as to why the suit ought to be spared from dismissal for want of prosecution.
2. In response thereto, the affidavit sworn by advocate *Chacha Odera* was filed on the plaintiff's behalf, stating that on 29th August, 2017 he had a meeting with the plaintiff whereby the said plaintiff communicated his intention to instruct the firm of Oraro & Co. Advocates; where the deponent is a partner; to act for him in place of the firm of Ongoya & Wambola Advocates.
3. The deponent further asserted that there was subsequently a misunderstanding between himself and the plaintiff regarding whether their meeting resulted in formal instructions for representation by the abovementioned firm of advocates, hence the reason as to why no action was taken in the matter.
4. Another affidavit was sworn by *Millicent Ngetich* on behalf of the defendant averring that since the suit was filed on 31st March, 2014 there has been no major progress therein and that since the same was last in court on 29th September, 2015 the plaintiff has not taken any steps to set it down for hearing or in any way prosecute it.
5. Further to the above, it is the deponent's statement that the plaintiff has not sworn an affidavit explaining the inaction in his suit or confirming the averments made in the affidavit sworn by *Chacha Odera*. Resultantly, the deponent at the behest of the defendant has urged this court to dismiss the plaintiff's suit for want of prosecution.
6. I have duly considered the facts deponed to in the respective affidavits in support of and against the dismissal of the suit. It is apparent from the record that the suit was indeed last in court on 29th September, 2015; on that particular date, the parties were directed to file agreed issues and obtain a mention date from the registry.
7. Since then, no action was taken in the matter. Moreover, the plaintiff has not filed an affidavit offering an explanation for the dormancy in his suit, neither is such explanation offered in the affidavit sworn by his advocate. In any event, it is evident that if at all the plaintiff truly instructed the firm of Oraro & Co. Advocates to take over from his erstwhile firm of advocates on record as deponed, the same is indicated as having taken place in 2017 which is approximately two (2) years since the suit was last in court. The two (2)-year gap in between has not been accounted for.
8. In view of the foregoing, I am satisfied that no explanation, reasonable or otherwise, has been given for the failure on the part of the plaintiff in prosecuting his case for close to four (4) years now. If anything, it is apparent the plaintiff is no longer interested in pursuing his case.
9. Consequently, I find this to be a suit deserving of dismissal for want of prosecution and move to dismiss the same with costs to the defendant.

Dated, signed and delivered at **NAIROBI** this 25th day of July, 2019

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L. NJUGUNA

JUDGE

In the presence of:

..... for the Plaintiff

..... for the Defendant