



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CIVIL SUIT NO. 16 OF 2010**

**SAMUEL AUNGA ANGWENYI ..... PLAINTIFF**

**VERSUS**

**BARCLAYS BANK OF KENYA LTD ..... DEFENDANT**

**RULING**

On 9<sup>th</sup> February, 2018, the Court served the Plaintiff’s and Defendant’s Advocates with a Notice to Show Cause why the suit should not be dismissed for want of prosecution. The suit was listed for dismissal on 16<sup>th</sup> February, 2018 and the Plaintiff filed a Replying Affidavit dated 8<sup>th</sup> March, 2018 in which he attributed the delay to his former Advocates who kept telling him that they were awaiting for the defendant to file their lists of witnesses, witness statements and documents before they could fix the matter for hearing. He depones that he has been steadfast in his pursuit for justice and that the delay in hearing the matter was due to the indolence on the part of the former advocates. He therefore urged the court to give him an opportunity to have his day in court.

The defendant did not file a response to the plaintiff’s affidavit.

I have considered the affidavit of the Plaintiff and I have also perused the court record. The last time when the matter was in court was on 19<sup>th</sup> March, 2015, the court directed the parties to comply with all pre-trial requirements and take a date before the Deputy Registrar to confirm compliance. From the record, the Plaintiff complied but the defendant has not done so todate. Nonetheless, if a defendant fails to comply this does not mean that the Plaintiff should wait in eternity without taking action in the matter. It would have been prudent for the Plaintiff to take further directions from the court in those circumstances. Under order 17 rule (2) of the Civil Procedure Rules the court is empowered to dismiss a suit which has stalled for a period of one year.

Order 17 Rule 2 of the Civil Procedure Rules, 2010 Provides that

***“(1) In any suit in which no application has been made or step taken by either party for one year, the court may give notice in writing to the parties to show cause why the suit should not be dismissed, and if cause is not shown to its satisfaction, may dismiss the suit.***

***(2) If cause is shown to the satisfaction of the court it may make such orders as it thinks fit to obtain expeditious hearing of the suit.”***

I have considered the Plaintiff’s explanation. Being a layman, the plaintiff may not have been conversant with steps to be taken when the other party has not filed the necessary documents. The Plaintiff has been vigilant on his part in that he had been visiting the Advocates office to check on the progress of the case. In the interest of substantive justice, it would be just and fair to grant him a chance to prosecute the case.

Since this is a long outstanding matter having been filed in the year 2010, there is a need to have the same prosecuted expeditiously and I order that the same be prosecuted within the next 120 days from the date of this ruling failure to which it shall stand dismissed.

There shall be no orders as to costs.

**Dated, Signed and Delivered at Nairobi this 15<sup>th</sup> Day of March, 2018.**

.....

**L. NJUGUNA**

**JUDGE**

**In the Presence of**

..... *For the Applicant*

..... *For the Respondent*