



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL SUIT NO. 247 OF 2008

LUNJALU JORAM OKOTSI.....PLAINTIFF

VERSUS

THE VICE CHANCELLOR UNIVERSITY OF NAIROBI.....1ST DEFENDANT

UNIVERSITY OF NAIROBI.....2ND DEFENDANT

RULING

1. On 30th May 2018, the Court issued a Notice to the Parties herein to show cause why the suit should not be dismissed for want of prosecution. The matter was listed for dismissal on 8th June, 2018. In Response to the Notice, the Plaintiff filed a Replying Affidavit dated 5th June, 2018 sworn by the Plaintiff.

2. It was deponed that when the matter was last in Court on 15th March, 2016, the Defendants were not ready to proceed. That the Plaintiff's Advocate invited the Defendants for fixing of a hearing date on 22nd June, 2017, however, on that date they were not able to fix the date as the file was missing. The invitation letter is annexed to the Affidavit. The Plaintiff has also annexed a letter dated 15th March, 2018 addressed to his Advocate enquiring on whether the file was finally traced and a hearing date fixed. The Plaintiff depones that he has not lost interest in the matter and requests to be granted an opportunity to prosecute the same.

3. The Defendants did not file a Reply.

4. 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.”

5. I have considered the Affidavit of the Plaintiff. The Plaintiff has explained the delay in prosecuting the matter being that the file was missing. The invitation letter to fix the date is duly served upon the Defendants. The Plaintiff cannot be said to have been indolent in the matter since he has been following up with his Advocates to find out whether a date was fixed as evidenced in his letter annexed to the Replying Affidavit.

6. The test for dismissal of a suit for want of prosecution is stated in the case of **Ivita -v- Kyumbu (1984) KLR 441**. The test was expressed as follows:

“The test is whether the delay is prolonged and inexcusable and if it is, can justice be done despite such delay. Justice is justice to both the plaintiff and the defendant so both parties to the suit must be considered and the position of the judge too, because it is no easy task for the documents and or witnesses may be missing and evidence is weak due to the disappearance of human memory resulting from lapse of time; the defendant must satisfy the court that he will be prejudiced by the delay or even that the plaintiff will be prejudiced; he must show that justice will not be done in the case due to the prolonged delay on the part of the plaintiff.”

7. I find that the Plaintiff has satisfactorily explained the delay and he is desirous of prosecuting the case. In the interest of justice, it would only be fair to grant him an opportunity to be heard on merit. The Court also notes that this is a long outstanding suit having been filed in the year 2008 and there is a need to have the same prosecuted expeditiously.

8. Therefore, the orders of this court are that the Plaintiff do prosecute the suit within the next 120 days from the date of this ruling failing which it shall stand dismissed.

Dated, Signed and Delivered at Nairobi this 28th Day of June, 2018.

.....

L. NJUGUNA

JUDGE

In the Presence of

.....*For the Plaintiff*

.....*For the Defendants*