



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL SUIT NO. 363 OF 2013 (O.S)

WILLIAM TIMATE SIALALA.....1ST APPLICANT

SUAKEI OLE PARKIRE.....2ND APPLICANT

LATOO ENE PRIAKANGA.....3RD APPLICANT

VERSUS

JAMES M. RIOBA T/A J/M.

RIOBA & COMPANY ADVOCATES.....RESPONDENT

RULING

1. On 1st March, 2018, the Court issued a Notice to Show Cause why the suit should not be dismissed for want of prosecution. The suit was listed for dismissal on 8th June 2018 and the Applicants filed an Affidavit dated 11th April, 2018 showing cause why it should not be dismissed. The Applicants attributed the delay in prosecuting the suit to the demise of the Respondent advocate who was the sole proprietor of the law firm. It is deponed that following the last Court attendance on 28th October, 2014 when the court was informed that the Respondent had passed on, the matter was stood over generally. It is further deponed that the Applicants wrote a letter to the Law Society of Kenya (LSK) on 28th October, 2014 enquiring on who the successors of the Respondent's law firm are. That a reminder was written on 4th March, 2016 and the LSK responded on 16th March, 2016 informing the Applicants that the society no longer appoints successors and that they should contact the family members of the deceased Advocate. The Applicants further depone that since then, they have made efforts to trace the family members in vain but they are willing to make further enquiries from the designated relevant offices on the whereabouts of the deceased advocate's family members.

2. I have considered the Affidavit of the Applicants and I have also perused the court record. The last time the matter was in court was on 28th October, 2014 when it was stood over generally following the demise of the Respondent. Since then its more than 3 years without any step having been taken to prosecute the suit. Rather than writing the letter to LSK and waiting for two years to send a reminder, the Applicants have not demonstrated any effort to trace the family members of the deceased Advocate after they got a response from LSK which was sent more than 2 years ago.

3. 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.”

4. The Applicants seek more time to enquire from the relevant offices on the whereabouts of the deceased advocate's family members and it is their averment that they are ready to comply with any conditions imposed by the court in this matter. In the interest of justice I will grant the applicants an opportunity to prosecute the suit. The same to be prosecuted within 6 months from the date of this ruling failure to which it shall stand dismissed.

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

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L. NJUGUNA

JUDGE

In the Presence of

..... For the Applicants

..... For the Respondent