



**REPUBLIC OF KENYA**

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

**CIVIL SUIT NO. 333 OF 2010**

**FRANCESCO CALAGANO..... PLAINTIFF/RESPONDENT**

**-VERSUS-**

**VILLA CARE MANAGEMENT LIMITED.....1<sup>ST</sup> DEFENDANT/APPLICANT**

**DANIEL OJIJO.....2<sup>ND</sup> DEFENDANT/APPLICANT**

**RULING**

1. This Ruling seeks to determine the application dated 20/5/2016 by the Defendants brought under the provisions of Order 17 Rule 2 (3) of the Civil Procedure Rules seeking to have the suit dismissed for want of prosecution and costs of the application and the suit be borne by the Plaintiff. The Application is supported by the Affidavit of Stephen Gitonga Mureithi of even date.

2. The Application is premised on the grounds that since the suit was filed on 1<sup>st</sup> July, 2010, the Plaintiff has never taken any step to prosecute the matter, that the delay is inordinate and it is apparent that the Plaintiff has lost interest in the matter. The Plaintiff did not file a response despite having been served with the application and a hearing notice of the application.

3. I have considered the application and the Applicants oral submissions. Dismissal of Suits for want of prosecution is governed by **Order 17 Rule 2** of the Civil Procedure Rules. Sub rule 3 of Order 17 Rule 2 provides that “*Any party to the suit may apply for its dismissal as provided in sub-rule 1.*” And sub rule 1 provides that “*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.*”

4. The suit herein was filed 8 years ago and since then, nothing much has happened in the matter. Infact, it is the counsel for the defendant who has been moving the court by taking hearing dates on the last two occasions. A suit ought to be prosecuted while facts and evidence are still fresh in the memories of the witnesses. Despite the Plaintiff having been served with the application, he did not file a response. This is a clear indication that the Plaintiff has lost interest in the suit and is not desirous in prosecuting it. A delay of 8 years in prosecuting the suit is prolonged and inexcusable. The plaintiff did not explain this delay and therefore it is my finding that the pendency of the suit is prejudicial to the Defendants.

5. The application is therefore allowed with costs to the defendants. The defendants shall also have the costs of the suit.

**Dated, Signed and Delivered at Nairobi this 21<sup>st</sup> Day of June 2018.**

.....

**L. NJUGUNA**

**JUDGE**

**In the Presence of**

..... *For the Plaintiff*

..... *For the Defendant*