



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
CIVIL SUIT NO. 377 OF 2000 CONSOLIDATED
WITH NBI. HCCC NO. 797 OF 2001

CUIGU MWAGIRU.....PLAINTIFF

VERSUS

TEACHERS SERVICE COMMISSION....1ST DEFENDANT

THE ATTORNEY GENERAL.....2ND DEFENDANT

RULING

This ruling relates to Civil suits numbers 377 of 2000 and 797 of 2001 which were consolidated by an order of the court given by Justice Khamoni on the 8th day of July, 2003. The matters came up for Notice to show cause on the 9th day of March 2018 but on the said date, the court noted that Counsel for the plaintiff had not been served with the notice and the same was stood over to 19th day of April 2018 for Notice to show cause. On the said date, Mr. Mukungu appeared for the plaintiff and sought the leave of the court to file an affidavit showing cause why the suit should not be dismissed for want of prosecution. Counsel was given time and the matter was again stood over to 8th June 2018 by which time Counsel had filed two affidavits and the matter was stood over to the 14th June 2018 for ruling.

In the said affidavits, the reasons given for the delay are that after the matter was last in court on the 6th June 2011, the advocate for the plaintiff lost contact with his client due to the fact that the plaintiff changed his address without notifying his counsel as a result of which the communication between the two was impeded until 6th February 2015 when he reached him by email.

That after the said communication, the plaintiff expressed his desire to have the case prosecuted and at the same time apologized for the long silence which he said had been caused by the state of despair owing to the fact that he had been litigating for 15 years without getting a chance to have his case set down for hearing.

It is further deponed that, thereafter, the plaintiff's firm of Advocates embarked on tracing the court file for purposes of confirming the status and with a view to taking the necessary action towards prosecution of the suit but the court file could not be traced, only for the said firm to be served with a Notice to show cause.

In the supplementary affidavit sworn by one Roy Kamau, he has deponed as to how he was given instructions by the plaintiff's firm of Advocates to peruse the file with respect to the case herein to ascertain the status of the same. The said instructions were received on 17th April, 2015 and having made several visits to the registry at the High Court Nairobi, the files could not be traced. These visits were made between the month of June 2015 and February 2018.

Counsel for the plaintiff urged the court not to dismiss the suit as the delay in prosecuting the same was not intentional but was due to inadvertence and circumstances beyond their control.

The court has considered the contents of the two affidavits filed in response to the Notice to show cause. I have also taken the liberty to peruse the court record. The matters were last in court on 16th December, 2009 when the court could not hear them as the Hon. Judge was on transfer to another station and the matter was stood over generally with an order that a date be taken on priority basis.

The record further shows that on 15th December 2010 the plaintiff's Advocate fixed a hearing date for 6th June 2011 but the record does not

show what happened on the said date. Since then, no other action was taken in the matter until 9th March 2018 when it was first listed for Notice to show cause which was after eight years since the last action was taken in the matter.

Counsel for the plaintiff states that he lost contact with his client until 6th February 2015 when he reached him on email and thereafter in the month of April 2015, he instructed his clerk to peruse the court file but the same could not be traced. From what is deponed to in the two affidavits, this court gets the impression that both the plaintiff and his counsel have not been eager to have the matter prosecuted. After the matter was last in court, the plaintiff went to sleep, changed his address and did not bother to inform his advocate of the said change. He also did not bother to visit the offices of his Advocate to follow up the matter until 6th February 2015 when he reached his Advocate by email. The reason he has given for failure to follow up the matter is frustration as a result of the delay it had taken in setting the matter for hearing. It is common knowledge that, the duty to fix a matter for hearing lies on the Advocate for the plaintiff.

The reason given that the court file was missing since the year 2015, is just a statement which is not substantiated. The court notes that, no evidence has been placed before it by way of letters written to the Deputy Registrar requesting for the file in absence of which, this court is not convinced that the file was missing.

In the premises, I find that no good reasons have been given why the suits have not been prosecuted for a period of eight years. It is ordered that the two suits are hereby dismissed for want of prosecution.

Dated, Signed and Delivered at Nairobi this 14th Day of June 2018.

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L. NJUGUNA

JUDGE

In the Presence of

.....*For the Applicant*

.....*For the Respondent*