



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NUMBER 146 OF 2013

V P (A minor suing through next friend and

***father* S R P PLAINTIFF**

VERSUS

ISMAEL NDOLO OMOLO DEFENDANT

RULING

1. The subject matter of this ruling is the motion dated 1st March, 2017 taken out BY the Defendant in which he sought for this suit to be dismissed for want of prosecution. The motion is supported by the affidavit of Kinyanjui Theuri.
2. When served with the motion, the Plaintiff filed the replying affidavit of John Odera to oppose the same. When the motion came up for inter partes hearing, learned counsels appearing in the matter recorded a consent order to have the motion disposed of by written submissions.
3. I have considered the grounds stated on the face of the motion and the facts deponed in the affidavits filed in support and against the motion. It is the submission of the Defendant that it is now more than three years and ten months since this suit was filed and the Plaintiff’s counsel has taken no steps to have the suit prosecuted. The Defendant asked this court to find that the Plaintiff has lost interest in pursuing this matter.
4. The Plaintiff opposed the application and relied on the relying affidavit of John Odera Were. It was pointed out that one year has not lapsed since the last step taken by the Plaintiff through his advocate to have the suit prosecuted.
5. It was also stated that both advocates had commenced negotiations to have the case amicably settled out of court but the negotiations failed to yield fruits. The Plaintiff’s advocate annexed to the replying affidavits correspondences exchanged between the court and the Plaintiff’s advocate over dates for mention for direction. The Plaintiff further denied the allegation that he has lost interest in pursuing his case.
6. Having considered the rival arguments, one issue stands out for consideration. The Plaintiff’s advocate has stated that there have been correspondences between them and the Defendant’s advocates to have the dispute amicably settled. The Defendant’s advocate has admitted that the advocates were in a discussion to have the matter settled. However, the Defendant avers that such negotiations took place more than two (2) years ago and not a year ago as stated by the Plaintiff. Neither the Plaintiff nor the Defendant has annexed the correspondences they exchanged. I can only infer that may be they could not do so because the correspondences could have been on a without prejudice cover.
7. It is clear from the submissions of the disputants that the delay in seeking to have this suit prosecuted is for a period between a year and two years. The delay is said to have been caused by an attempt to have the suit amicably settled. In my humble estimation, I find the delay not inordinate. The same is excusable in the circumstances of this dispute.
8. A fair order in this matter is to dismiss, which I hereby do, the motion dated 1st March, 2017. Costs of the motion to abide the outcome of this suit.

Dated, signed and delivered at Nairobi this 16th day of August, 2018.

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J K SERGON

JUDGE

In the presence of

..... *for the Applicant*

..... *for the Respondent*