

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO.585 OF 2009

ISAIAH KUBAL.....1ST PLAINTIFF

JOSEPH OLE TIPAPE.....2ND PLAINTIFF

DAVID KINYUA MBAGGIA.....3RD PLAINTIFF

VERSUS

MUNIR ABUBAKAR MASQUID.....DEFENDANT

RULING

The suit herein was filed way back on the 27th day of October, 2009. Due to the slow pace at which it was being prosecuted, the defendant filed an application dated 28th May, 2014 to have the suit dismissed for want of prosecution.

The said application was heard by Hon. Justice Mbogholi but he dismissed the same with costs to the defendant. The Judge directed the plaintiff to take discernible steps within 30 days after delivery of the ruling in order to move the case towards hearing and to this end, the plaintiff was ordered to take a date for pre-trial directions as soon as possible (within 30 days).

The plaintiff did not list the matter for directions as ordered by the court until the 29th June 2015 and even then, the plaintiff had not yet complied with order 11 of Civil Procedure Rules. The matter was listed before the Deputy Registrar who ordered the plaintiff to comply within 30 days from the date thereof. On 4th day of August 2015, the matter was again in court and the plaintiff was yet to comply and he was given a further 14 days to do so but todate he has not complied.

The court listed the matter for notice to show cause on the 21st September 2018. In response to the said notice, Isaiah Kubai, one of the plaintiffs filed a replying affidavit. I have perused that replying affidavit and also the record of the court. The deponent admits there has been a delay in prosecuting the matter but he has not explained the delay.

The record will show that the plaintiffs have been given sufficient time to move the matter towards hearing but they have done little if nothing much. The order of Justice Mbogholi given in his ruling delivered on the 4th day of March 2015 was never complied with.

I find that no good reason has been given why the suit has not been prosecuted since its inception in the year 2009. The same is hereby dismissed for want of prosecution with costs to the defendant.

Dated, Signed and Delivered at Nairobi this 19th day of October, 2018

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L. NJUGUNA

JUDGE

In the presence of:-

..... **For the Plaintiff**

..... **For the Defendant**