



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

MISC APPLICATION NO. 560 OF 2007

PAMELLAH CHARM AMADI.....PLAINTIFF/APPLICANT

-VERSUS-

BARAZA LIMITED T/A KENYA

TELEVISION NETWORK.....1ST DEFENDANT/RESPONDENT

DR. MAXWELL O. OKONJI.....2ND DEFENDANT/RESPONDENT

DR. FRANK NJENGA.....3RD DEFENDANT/RESPONDENT

RULING

1. The Plaintiff/Applicant herein, took out the notice of motion dated 29th May, 2018 under Article 159 (2) (a) and (b) of the Constitution; Section 3A of the Civil Procedure Act; and Order 12, Rule 7 of the Civil Procedure Rules, seeking the following orders:

i) Spent

ii) THAT Misc. Application No. 560 of 2007 which was dismissed on 9th April 2015 be reinstated.

2. The aforesaid motion is supported by the grounds set out on the face thereof and two affidavits of **Pamella Charm Amadi**.

3. The 3rd Defendant/Respondent filed grounds of opposition dated 20th September, 2018 while the 1st Defendant filed the replying affidavit sworn by Millicent Ngetich to oppose the motion.

4. The court has considered the grounds set out on the face of the application and the arguments by the respective parties. A close study of the record reveals that the suit had been dormant for a long period of time, thereby prompting its dismissal by the court on its own motion on 9th April, 2015.

5. The Applicant has argued that she did not receive the notice to show cause issued by the court and hence she was not aware of the dismissal order. In addressing this issue, the court in the case of ***Fran Investments Limited v G4S Security Services Limited [2015] eKLR*** held inter alia that whereas notice ought to be given, there is no requirement that such notice should be served. In most instances if not all, notices for dismissal are posted on the judiciary website, local newspapers or in the court cause list. I therefore agree that the court had no obligation to serve such notice so long as the same was given.

6. The Applicant has stated that some of the reasons for not prosecuting her suit included unlawful incarceration, financial constraints and unemployment hence her inability to afford legal counsel.

7. The above arguments were contested by the 1st Defendant, who submitted that no reasonable explanation has been given by the Applicant for failing to prosecute her case and that the arguments raised in her supporting affidavit are mere allegations.

8. This court has consistently stated that a party should strive to diligently pursue his or her case to the very end. In doing so, such party not only assists in the expeditious disposition of cases but also ensures that justice is served to all parties.

9. In the present case, the parties have been in court for a prolonged period of time without proceeding to the hearing of the matter. It is the

duty of the court to balance the rights of the Applicant to have her day in court as against the rights of the Defendants to see an end to litigation.

10. This court appreciates the fact that financial constraints and other challenges can affect one's ability to fully pursue his or her case. However, this should not be taken to mean that a party can sleep on his or her case for an inordinately long time. Be that as it may, it would appear the Applicant has suffered and continues to suffer grave distress.

11. The 1st Defendant on its part argued that it has been prejudiced since some of its witnesses have left its employment. However, the court is considerate that the Applicant too stands to suffer prejudice as she will be denied access to justice.

12. The court also wishes to address the argument raised by the 3rd Defendant that the court is functus officio since the suit was already dismissed in 2015 and hence the motion is incompetent, incurably defective and an abuse of court process. It is the court's opinion that it retains its inherent power to determine such applications and therefore it is not functus officio.

13. This court finds that whereas there was a considerable delay, the cause for the delay was sufficiently explained. Therefore, this court will exercise its discretion in favour of saving the suit.

14. In the end, the order of 9th April, 2015 is set aside and the suit is reinstated on condition that the Applicant sets down the same for hearing within the next 3 months, failure to which the suit shall stand dismissed. There shall be no order as to costs.

Dated, Signed and Delivered at Nairobi this 30th day of November, 2018.

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J.K. SERGON

JUDGE

In the presence of:

..... for the Plaintiff/Applicant

..... for the 1st Defendant/Respondent

..... for the 2nd Defendant/Respondent

..... for the 3rd Defendant/Respondent