

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL CASE NO.116 OF 2009

JOAN KULOBA.....PLAINTIFF

VERSUS

ASMAN ACHANDO WATAKO.....1ST DEFENDANT

ELDORET EXPRESS LIMITED.....2ND DEFENDANT

RULING

The matter was on the 12th October, 2018 listed for Notice to Show cause, why it should not be dismissed for want of prosecution. On the said date, Counsel for the plaintiff requested for time to file an affidavit in response to the same, which was filed on the 12th day of October, 2018. The same was sworn on 12th October, 2018 by George O. Odhiambo, Advocate, who is in conduct of the matter on behalf of the plaintiff.

In the said affidavit, it is deponed that, the cause of action that led to the filing of the suit, arose on the night of 26th/27th July 2008 and the suit was filed on 11th March 2009. That the accident involved motor vehicle registration number KAQ 731B, which was insured by Blue Shield insurance Company Limited and on many occasions when the suit has been set down for hearing, the defendants have raised the issue of the existence of the moratorium, following the placement of Blue Shield Insurance Company under receivership.

It is deponed that the previous legal position with legal to the moratorium has been set aside in a judgment of the High Court at Meru following which, the plaintiff is now ready to prosecute the matter to its logical conclusion. He urged that in the interest of justice the matter should not be dismissed.

The court has considered the contents of the said affidavit. I have also perused the record of the proceedings and indeed it's true that the reason why the same has not been prosecuted is the existence of the moratorium imposed on Blue Shield Insurance Company.

The court notes that as deponed by Mr. George O. Odhiambo, the plaintiff is now ready to prosecute the matter.

In the interest of justice and considering that this is a very old matter, I do order that it be prosecuted within 90 days from the date of this ruling failing which it shall stand dismissed.

Dated, Signed and Delivered at Nairobi this 29th day of November, 2018

.....

L. NJUGUNA

JUDGE

In the presence of:-

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

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