

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT ELDORET

MISC CIVIL APPLICATION NO. 346 OF 2015

MERCY KOGO.....APPLICANT

-VERSUS-

LUKA YEGO.....RESPONDENT

RULING

[1] This Ruling is in respect of the Notice of Motion dated **23 March 2017**. The application was filed herein by the Applicant pursuant to **Order 17 Rule 2** of the **Civil Procedure Rules, 2010** for orders that the application filed on **23 October 2015** be dismissed for want of prosecution and that the costs thereof be provided. The application was predicated on the ground that it is now one year since the application was filed and that the same has never been fixed for hearing or prosecuted for one year.

[2] The application was supported by the affidavit of the Applicant, **Mr. Luka Yego**, who is also the Respondent in the impugned application. According to the Applicant, the Respondent had not taken any steps to prosecute her application dated **22 October 2015** because it was filed for the sole purpose of obstructing the execution of the Decree issued in **Kapsabet PMCC No. 16 of 2015: Luka Yego vs. Margaret Chepchumba alias Mercy Kogo**; and therefore ought to be dismissed with costs.

[3] The application was opposed by the Respondent vide her Replying Affidavit sworn on **21 June 2017**. She denied the averments that she had not taken any steps to prosecute her application, and asserted that she had on several occasions fixed the said application for hearing but for one reason or another the same was never heard. She averred that the last time the application was fixed for hearing was on **14 June 2016** when the Respondent's Counsel failed to attend court. She annexed to her affidavit a copy of a letter by her Advocate requesting for a hearing date within the 1st Quarter of **2017** to demonstrate that she was keen on prosecuting her application.

[4] It was further the averment of the Applicant that the lower court granted her stay pending the hearing and determination of her application on condition that she deposits half of the decretal amount in court; which order was complied with as evidenced by Annexure MK2 to her Supporting Affidavit. She therefore urged for the dismissal of the instant application to pave way for the hearing of her application.

[5] I have considered the application and the averments in the parties' respective affidavits. I have also perused the record, and would agree with the Respondent that she has actively moved the Court for the prosecution of her application dated **22 October 2015**; and that her Advocate obtained hearing dates not only in **2015** but also in **2016**. The record further shows that not one year had gone by as of **10 April 2017** when the instant application was filed from the date of the last action; which was on **14 June 2016**.

[6] In the premises, the application is entirely premature, if not altogether misconceived. The same is accordingly dismissed with costs.

It is so ordered.

DATED AND SIGNED AT NAIROBI THIS 20TH DAY OF DECEMBER, 2018

OLGA SEWE

JUDGE