



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CIVIL CASE NO. 446 OF 2006**

**HON. DR. CHRISTOPHER MURUNGARU.....PLAINTIFF**

**- V E R S U S -**

**JOHN GITHONGO.....DEFENDANT**

**RULING**

1) The defendant took out the motion dated 14.12.2018 in which he principally sought for the adjournment of the hearing of this suit from 17.12.2018 to the month of January 2019. The defendant swore an affidavit in support of the motion. The motion was served upon the plaintiff's advocate in court. This court however permitted the plaintiff's advocate to orally respond to the motion.

2) It is the submission of Miss Kamau, learned advocate holding brief for Mr. Wandabwa for the defendant, that the defendant's last witness, Hon. Raila Odinga is not in a position to attend court to testify on 17.12.2018 because he will be out of the country. She proposed for the hearing of the case to be adjourned to 14.1.2019. The learned advocate referred to the letter from the witness's secretariat dated 12.11.2018 which letter was also presented to this court on 13.11.2018 to persuade this court to have the hearing of this case adjourned.

3) Mr. Kilukumi, learned advocate for the plaintiff strenuously opposed the application for adjournment arguing that the same had previously been sought and this court declined to accede. The learned advocate argued that the defendant was hell bent to have the hearing of this suit put off to the year 2019 to the utter detriment of the plaintiff. It was pointed out that this is a case which has been pending in the corridors of justice for the last 12 years. Miss Kamau is of the submission that the plaintiff can be compensated by costs hence he will not be prejudiced.

4) Having considered the material placed before this court and having considered the rival oral submissions, it is not in dispute that this suit has been pending in this court for more than 12 years.

5) This is the second time the defendant is seeking to have the hearing of the defence case adjourned on the basis that his last witness is unavailable to attend court. This court considered a similar application on 6/11/2018 and decided to have the matter adjourned to 13.11.2018 for mention to enable the defendant consult his witness and have convenient hearing dates fixed within this year.

6) On 13.11.2018, the defendant's advocate informed this court that Hon. Odinga would not be available till 14.1.2019. This court took into account the defendant's request but declined to accede to the request but instead gave him latitude by adjourning the hearing of the matter to 17.12.2018. This court indicated in its brief ruling that it was reluctant to have the hearing of the case spill over to the year 2019.

7) The defendant has today made a similar request on the basis of the same grounds. This court is not convinced that the hearing of this case should be adjourned. It is common knowledge that defendant's witness has been within the country but has been reluctant to attend court to testify.

8) I think the witness has not given priority or preference to this case. I reject the application for adjournment for the following reasons:

**i. That this is a very old case and any further delay will adversely affect the plaintiff's rights to a speedy conclusion of the matter and no amount of costs can compensate the plaintiff.**

**ii. That the reason advanced by the defendant in support of the application for adjournment is not satisfactory.**

**iii. That the defendant has previously been accommodated with adjournments but he appears to have taken for granted such indulgence.**

9) Consequently, I direct that this suit proceeds for hearing as scheduled.

**Dated, Signed and Delivered in open court this 17<sup>th</sup> day of December, 2018.**

**J. K. SERGON**

**JUDGE**

In the presence of:

.....for the Plaintiff

..... for the Defendants