

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL SUIT NO. 617 OF 2007

JOSEPH NJIRU KAUGI

CATHERINE MURIGU NJUIRU (*Suing as personal*)

Representatives of the estate of Martin Muriithi

Njiru -DECEASED.....PLAINTIFF/RESPONDENT

-V E R S U S -

KENYATTA NATIONAL HOSPITAL BOARD.....DEFENDANT/APPLICANT

RULING

1. The subject matter of this ruling is the motion dated 9th February 2016 in which Kenyatta National Hospital Board the defendant herein applied for **inter alia**, the suit to be dismissed for want of prosecution. The motion is supported by the affidavit of Stephen Bundotich. When served, Joseph Njiru Kaugi and Catherine Marigu Njuiru, the plaintiffs' herein filed grounds of opposition to resist the motion. When the motion came up for interpartes hearing, learned counsels recorded a consent order to have the application disposed of by written submissions.

2. I have considered the grounds stated on the face of the motion and grounds of opposition. I have further considered the facts deponed in the supporting affidavit plus the rival written submissions. The defendant argued that when the suit was placed before Justice Mabeya on 19.03.2015, the honourable judge issued directions ordering the parties to file their respective comprehensive witness statements and bundle of documents within 30 days. The defendant submitted that since the plaintiff has not complied with the aforesaid directive the suit should be dismissed for want of prosecution and for failing to comply with the court order. The plaintiffs on the other hand are of the view that the suit is not ripe for dismissal and that the plaintiff has engaged themselves in a game of delaying tactics. The defendant argued that it is against the provisions of Article 50 as read with Article 159 of the constitution of Kenya, 2010 to deny a litigant a right for a fair hearing. The main ground of contention is whether or not the suit should be dismissed on the basis that no witness statement and documents were not filed by the plaintiff as directed by the court. The honourable Mr. Justice Mabeya was categorical that parties should file comprehensive witness statements and documents within 30 days. When the defendant realised that the plaintiff had not filed the envisaged documents within the given time frame, it sought for the suit to be dismissed. I have carefully examined the directives given by Justice Mabeya and it is apparent that the honourable judge did not make a default clause. It is also clear that as at the time of issuing the directive, the plaintiffs had already filed a witness statement which was not comprehensive. The defendant on its part did not deem it fit to file its witness statements and documents as directed by court. Both parties are guilty for not complying with the directives of the court. In the circumstances of this case and in view of the fact that the court did not prescribe any sanction for a defaulting party, a fair order is to decline to grant the order.

3. In the end, I find no merit in the motion dated 9.2.2016. The same is dismissed. Each party to meet its costs.

Dated, Signed and Delivered in open court this 27th day of January, 2017.

J. K. SERGON

JUDGE

In the presence of:

..... for the Plaintiff

..... for the Defendant