



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
COMMERCIAL AND TAX DIVISION
CIVIL SUIT NO. 48 OF 2014

DIOCESE OF KITUI REGISTERED TRUSTEES.....PLAINTIFF

VERSUS

TIMOTHY KARUNGU KARANJA.....1ST DEFENDANT

DRY ASSOCIATES LIMITED.....2ND DEFENDANT

INSTEEL LIMITED.....3RD DEFENDANT

INVESTMENT ADVICE LINE LIMITED.....4TH DEFENDANT

FUSION CAPITAL LIMITED.....5TH DEFENDANT

RULING NO.2

1. The 2nd defendant requested that the suit be dismissed for want of prosecution. It was the applicant's case that the plaintiff had not taken steps to prosecute the suit for a period of over 1 year and 7 months.
2. The application is dated 4th May 2017, and it reveals, *inter alia*, that on 25th April 2017, the plaintiff filed an Amended Plaintiff.
3. As the Amended Plaintiff was filed only a few days before the application was filed to dismiss the suit for want of prosecution, I find that the application was not well founded.
4. The filing of the Amended Plaintiff on 25th April 2017, and the service of the said Plaintiff upon the applicant on 26th April 2017 constituted steps which had been taken in the proceedings.
5. Therefore, I reject the application to dismiss the suit for want of prosecution.
6. However, it is also crystal clear that the plaintiff relied upon an order made on 29th September 2015, to effect an amendment to the plaintiff in April 2017.
7. That would mean that the Plaintiff was amended after the lapse of about 19 months from the date when the court granted leave for the amendment to be effected.

8. Pursuant to Order 8 rule 6 of the Civil Procedure Rules a pleading should be amended within 14 days of the court granting leave for such amendment, unless the court would have specified a duration within which the amendment may be made.

9. In this case, the plaintiff has not shown this court, any order which allowed it a specified duration for amending the Plaintiff. It therefore follows that the Plaintiff ought to have been amended within 14 days from the date when the court granted leave to amend.

10. In the absence of an order which allowed the plaintiff the period within which it amended the Plaintiff, and because the plaintiff had neither sought nor obtained an extension of time within which to amend the Plaintiff, it follows that the Amended Plaintiff was filed without the leave of the court.

11. Order 8 Rule 6 of the Civil Procedure Rules categorically states that the order granting leave to amend shall cease to have effect at the end of 14 days from the date it was made, unless the court had specified a different period within which the party could make the amendment.

12. The plaintiff has not shown that it was allowed more than 14 days to make the amendment. Therefore, the order granting leave to the plaintiff to amend the plaintiff had lapsed long before the Plaintiff was amended.

13. Therefore the Amended Plaintiff cannot be allowed to remain on record: It is struck out.

14. The plaintiff shall pay to the 2nd defendant the costs of the application dated 4th May 2017.

DATED, SIGNED and DELIVERED at NAIROBI this 13th day of December 2017.

FRED A. OCHIENG

JUDGE

Ruling read in open court in the presence of

Mrs. Koech for the Plaintiff

No appearance for the 1st Defendant

Mueke for the 2nd Defendant

Miss Matata for Kabora for the 3rd Defendant

No appearance for the 5th Defendant

Collins Odhiambo – Court clerk.