



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO 401 OF 2013

NETWORK INDUSTRY AND SERVICES

(NETIS) COTE D’IVOIRE LIMITED.....PLAINTIFF

VERSUS

ADBLU EAST AFRICA LIMITED.....1ST DEFENDANT

GAVIN WILLIAM GERAGHTY.....2ND DEFENDANT

DAIVD GAVIN GERAGHTY.....3RD DEFENDANT

RULING

1. The Notice of Motion dated **16th December, 2015** was filed pursuant to Section 3A of the Civil Procedure Act and Order 17 Rule 2 (3) of the Civil Procedure Rules, 2010 for orders that:

1) The Plaintiff/Respondent’s suit against the Defendant/Applicant be dismissed for want of prosecution.

2) That all the Plaintiff/Respondent’s claims as against the Defendant/Applicant be forthwith dismissed.

3) That the costs of the application be borne by the Plaintiff/Respondent

2. The application is founded on the contention by the Defendant/Applicant that it is more than nine months since the Plaintiff/Respondent made any application or took any steps towards the prosecution of this suit, and that this is an indication that the Plaintiff/Respondent is no longer interested in prosecuting this suit. The application is supported by the affidavit sworn by **DOREEN MUTUNGA** annexed thereto.

3. A perusal of the Court record shows that this matter, which was filed in September, 2013 was last before the Court on 23rd February, 2015 when a Ruling was delivered in respect of the Plaintiff’s Preliminary Objection dated 1st January, 2014. Since then, the Plaintiff has not taken any steps towards progressing this case towards its hearing and final disposal. Order 17 Rule 2 (1) as read with sub-rule (3) of the Civil Procedure Rules recognizes that any party may apply for the dismissal of a suit in which:

“...no application has been made or step taken by either party for one year...”

4. Clearly therefore, it was not yet one year from the date of the Court's Ruling by the time the instant application was filed on 16th December, 2015. It is noted, nevertheless, that the period of one year has since lapsed, and whereas the Court has discretion to excuse such delay if the interests of justice would be thereby served, it is trite that such discretion can only be exercised judiciously and upon reasonable grounds. In the case of Jimmy Wafula Simiyu Vs Fidelity Bank [2014] eKLR the Court observed thus:

“...the Court has discretion to excuse a delay as long as it has been explained to the satisfaction of the Court. The satisfaction will come from the explanation given and the fact that the delay causes no substantial prejudice to fair trial or one of the parties or the other or both.”

5. In this case the application was served but has not been resisted by the Plaintiff/Respondent. Accordingly, no explanation has been proffered for the delay. Accordingly, I find merit in the Defendant/Applicant's contention that the Plaintiff/Respondent has lost interest in this case. Thus, the Notice of Motion dated 16th December, 2015 is hereby allowed and orders granted as prayed per prayers (1), (2) and (3) thereof.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 26TH DAY OF FEBRUARY 2016

OLGA SEWE

JUDGE