



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI COMMERCIAL & ADMIRALTY DIVISION

CIVIL CASE NO. 237 OF 2012

JANE WANJA MIRITI T/A SHARLIMON FOODS PLAINTIFF

VERSUS

BANK OF AFRICA KENYA LIMITED DEFENDANT

RULING OF THE COURT

1. The **Notice of Motion** application before the court is dated 29th July 2015, filed herein on 31st July 2015 by the Defendant. The application seeks an order that the Plaintiff's suit herein be dismissed with costs for want of prosecution and that the costs of this application be borne by the Plaintiff/Respondent.
2. The application is premised on the grounds that the Plaintiff has not taken any steps to set down the suit for hearing since 4th June 2014, a period of over one year, and that the said delay is inordinate, unreasonable and inexcusable and that in the interest of justice litigation must come to an end.
3. The application is not opposed. It was served upon the Plaintiff's advocate M/s Mohamed Madhani & Co. Advocates seven (7) months ago when the application was filed. Even the hearing notice of the application for hearing on 8th March 2016 was served upon the said advocate and they receive it on 1st February 2016. Affidavit of service to the effect was filed herein on 3rd February 2016.
4. Instead of replying to the application, the Plaintiff's advocate herein have only filed a yet to be heard application dated 19th October 2015 for leave to cease acting for the Plaintiff. When this application came up for hearing on 8th March 2016 Mr. Mbugua, Counsel for the Plaintiff submitted that they had not filed their reply and so the application was not opposed. Counsel did not even ask for leave to file a reply to the application.
5. I have carefully considered the application. It is true that the matter was last in court on 21st February 2014 for pre-trial, but even then it was listed by mistake. However, what is of greater concern to this court is that the Plaintiff's counsel does not care whether or not the suit is dismissed. They have not replied to the application and have also not sought leave to respond. What they are seeking is the leave to cease acting for the Plaintiff. This then must mean that the Plaintiff is herself not interested in the suit. I will allow the application as prayed as it is not opposed, and it is noted that this suit is dismissed while the Plaintiff is fully represented by her advocate on record.
6. Pursuant to the foregoing the Defendant's application herein dated 29th July 2015 seeking the dismissal of the suit herein for want of prosecution is allowed as prayed.

Orders accordingly.

READ, DELIVERED AND DATED, AT NAIROBI

THIS 28th DAY OF APRIL 2016.

E. K. O. OGOLA

JUDGE

Ruling Read in open court in the presence of:

Mr. Mbugua for Plaintiff

M/s Ogula for Defendant

Teresia – Court Clerk