



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NAKURU

CIVIL SUIT NO. 81 OF 2007

STANLEY KIPKURUI MUTAI.....PLAINTIFF

VERSUS

TEGAT TEA FACTORY CO. LTD.....1ST DEFENDANT

WILLIS ODHIAMBO-ZONAL MANAGER.....2ND DEFENDANT

BENJAMIN K. KIRUI.....3RD DEFENDANT

ALFRED KOECH.....4TH DEFENDANT

KENYA TEA DEVELOPMENT AUTHORITY.....5TH DEFENDANT

RULING

1. The Defendants' Motion dated 3rd July 2013 has been brought under the provisions of **Order 17 Rule 2(1), (2) and (3)**, and **Order 5 Rule 1** of the **Civil Procedure Rules**. They seek the following orders-
 - (a) that the Plaintiff be summoned to show cause why the suit should not be dismissed for want of prosecution;
 - (b) that in the event the Plaintiff fails to show sufficient cause, the court does dismiss the Plaintiff's suit with costs and
 - (c) that the costs of this application be provided for.
2. The application is based on the grounds that the Plaintiff has not taken any steps to prosecute this matter since it was last in court on 6/6/2007. That, the inordinate delay in prosecuting this matter delay has prejudiced the defendants.
3. The application is not opposed. Despite being served with the application, the Plaintiff did not file any documents in response.
4. Order 17 Rule 2(1) and (3) under which this application has been filed provide that-

“(1) In any suit in which no application has been made or step taken by either party for one year, the court may give notice in writing to the parties to show cause why the suit should not be dismissed, and if cause is not shown to its satisfaction, may dismiss the

suit.

(3) Any party to the suit may apply for its dismissal as provided in sub-rule (1).”

5. This suit was filed on 18th April 2007. Together with the Plaintiff, the Plaintiff filed an application seeking temporary injunction orders pending the hearing and determination of the suit. This application was subsequently abandoned with the consent of the parties on 6th June 2007, because according to the Plaintiff's Counsel, it had been overtaken by events. The Plaintiff's Counsel however indicated to the court that the Plaintiff wished to pursue the main suit and would be listing it for hearing. However, since that date, the Plaintiff has not taken any further step to prosecute the matter.
6. I am alive to the fact that a matter should be determined on its merit and the court should sparingly exercise its discretion to dismiss a case summarily.
7. This is one case that deserves to be dismissed for want of prosecution. The Plaintiff has clearly lost any interest in the suit. A period of three and a half years without any steps being taken to have the matter disposed of expeditiously is inordinate. It is further exacerbated by the fact that no excuse has been offered by the Plaintiff for his delay despite being duly served. The Defendants have been prejudiced by having a case pending and which the Plaintiff has shown no intention of having it concluded.

DETERMINATION:

8. Accordingly, the application dated 3rd July 2011 is allowed. This suit is hereby dismissed for want of prosecution.

There shall be no order as to costs.

Dated, Signed and Delivered at Nakuru this 17th day of February, 2015.

A. MSHILA

JUDGE