



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**CIVIL CASE NO. 933 OF 2000**

**DAVID KIMANI KONGO.....PLAINTIFF/RESPONDENT**

**VERSUS**

**THE CITY COUNCIL OF NAIROBI.....DEFENDANT**

**KENYA ANTI- CORRUPTION COMMISSION.....INTERESTED PARTY/APPLICANT**

**RULING**

1. **Kenya Anti- Corruption Commission**, the Interested party herein took out the motion dated 29.5.2015 in which he applied for this suit to be dismissed for want of prosecution with costs. The motion is supported by an affidavit of **Ben Murei** sworn on 29.5.2015. When served with the motion, the Plaintiff filed a replying affidavit, he swore to oppose the motion.

2. I have considered the grounds stated on the face of the motion and the facts deponed in the affidavit filed in support of the motion. It is argued that the plaintiff has failed to set down the suit for hearing since 2.5.2013, when the matter was last in court. It is said that since then the plaintiff has not shown any interest in preparing the suit for trial hence the suit should be dismissed for want of prosecution.

3. The plaintiff argued that the reason for his indolence is because he was arrested in February 2001 and arraigned in court vide **High Court Criminal Case Number 70 of 2001** and was acquitted after 3 years. He claimed that while in custody, he ran into financial difficulties where he lacked funds to remunerate his counsel. He added that he instructed the firm of **Waruhiu & Gathuru Advocates** who ceased from acting and eventually he instructed the firm of **Kihara Njunguna & Company Advocates** who are currently on record. He argued further that the attempts to file the notice of appointment was intricate by virtue of the fact that the court file could not be traced since the registry was being decongested. He added that he did not sue the applicant who voluntarily applied to be enjoined and that no prejudice would be occasioned on it should the suit be allowed to proceed.

4. I have carefully perused the record and it is apparent that the plaintiff filed the suit on 19<sup>th</sup> June 2000 wherein he sought for vacant possession of property known as LR 209/13539/158. The record shows that the Plaintiff's advocate filed the motion dated 30.10.2013 seeking leave to cease acting due to lack of instructions, which application was heard and allowed on 2.5.2013. Since then, no steps have been taken to have the suit fixed for hearing. It is now more than two years since the last time the matter was in court and the Plaintiff has not taken any steps to have this suit prosecuted.

5. However, looking at the annexure referred to by the plaintiff, there is a letter addressed to **Waruhiu &**

**Gathuru Advocates** dated 3<sup>rd</sup> February 2015 which the advocates on record are requesting for the plaintiff's files. There is another document dated 6<sup>th</sup> February 2015 that confirms receipt of more than one file including the one in this case and a copy of a document that confirms receipt of the cheque paid for purposes of releasing the file to the current advocates on record. I also note that the plaintiff's advocate filed their notice of appointment on 25<sup>th</sup> February 2015. All these activities were carried out before the applicant filed its application which is the subject matter of this ruling.

6. There is no measure of what amounts to inordinate delay.

Inordinate delay will differ from case to case depending on the circumstances of each case and the nature of the case. The explanation given for the delay is imperative. Due to the reasons advanced by the plaintiff that he was in custody for three years together with the fact that he had financial constraints, I am inclined to indulge him in this matter despite the fact that there was inordinate delay. The applicant did not controvert the plaintiff's averments. Consequently, the motion seeking to have the suit dismissed for want of prosecution is dismissed. Costs shall abide the outcome of the suit.

Dated Signed and Delivered in open court this 20<sup>th</sup> day of November, 2015.

**J. K. SERGON**

**JUDGE**

In the presence of:

..... for the Plaintiff

.....for the Defendant

.....for the Interested party