



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
CIVIL CASE NUMBER 82 OF 2009
JOYCE NELLY OCHOGO OKAL.....PLAINTIFF/APPLICANT
(Suing As Administrator of the Estate and on
Behalf of the Dependants of George Otieno Okal)
VERSUS
THE HON. ATTORNEY GENERAL.....1ST DEFENDANT/RESPONDENT
THE PERMANENT SECRETARY
OFFICE OF THE PRESIDENT.....2ND DEFENDANT/RESPONDENT
THE COMMISSIONER OF POLICE.....3RD DEFENDANT/RESPONDENT

R U L I N G

By a Notice of Motion dated 5th October, 2015, the Plaintiff/Applicant has moved this Honourable Court for the following orders: -

1. The order for dismissal of the suit, made on the 25th February, 2015 be set aside.
2. Costs of the Application be provided for.

The motion is brought under Article 50(1), 159(2) (d) of the Constitution of Kenya 2010 Sections 1A, 1B, 3A of the Civil Procedure Act and Orders 12 Rule 7 and 51 Rule 4 of the Civil Procedure Rules.

It is premised on the grounds set out on the body of the Application which are that the Plaintiff/Applicant delayed in taking steps to prosecute the Appeal leading to its dismissal on the 25th February, 2015, the said dismissal is prejudicial to the Plaintiff/Applicant, the reason for the delay was that the Plaintiff was waiting for the production of a major document which was in the possession of the Government of Kenya but the suit was dismissed before the document could be availed.

The Application is supported by the Affidavit of Charles Oyoo Kanyangi annexed to the Application and sworn on 5th October, 2015.

The summary of the facts of the case are that the same was filed on the 25th February, 2009 by the Plaintiffs who are the legal representatives to the estate of the late George Otieno Okal.

The deceased was an Inspector of Police employed as a Pilot in the Police Force, a Department under the Office of the President.

On the 27th day of July, 2006, the deceased had been deployed to fly a helicopter from Nairobi to Marsabit and back acting under the instructions of the 2nd and 3rd Defendants, their servants, employees and/or agents when he crashed in the said helicopter sustaining fatal injuries.

The Plaintiffs avers that the Defendants negligently and willfully failed to keep the helicopter in sound mechanical condition. They further aver that the Defendants gave the deceased such instructions while knowing that the said helicopter was mechanically defective and unairworthy which defect caused the accident.

As a result of the accident, the estate of the deceased suffered loss and damage which the Plaintiffs are now claiming from the Defendants.

Since the suit was filed in 2009 nothing much has been done to prosecute the same and consequently it was dismissed under Order 17 Rule 2(1) of the Civil Procedure Rules.

The Plaintiffs have brought the present Application for reinstatement. In the submissions made by their learned counsel on the 12th November, 2015 when the Application came up for hearing, he told the court that the case was dismissed without any notice to the Plaintiffs. He further told the court that he has been looking for the file for many months to file an amended plaint but it was not available.

He submitted that if the Notice to dismiss the suit had been received he would have attended court to show cause why the same should not be dismissed as the Plaintiffs are still interested in pursuing the matter.

He urged the court to reinstate the matter so that it can be adjudicated on, only after full hearing of the evidence.

I have carefully read the Application together with the Affidavit in support of the same. I have also perused the court file. Among the reasons given by the Plaintiffs/Applicants for the delay in prosecuting this matter is that they have been waiting for production of major documents which are in the possession of the Government of Kenya. The court file shows that the Plaintiffs filed an Application dated 14th May, 2010 seeking orders that the report of the Commission of Inquiry on the air crash set up by the former President in July, 1996 and the report on the air crash compiled by the police be supplied to them.

The said Application was heard by Hon. H. P. G. Waweru and it was dismissed on the 15th day of February, 2013 yet one of the grounds on which the Application is premised is that the Plaintiffs are waiting for the production of crucial documents from the Government of Kenya. It is now over two (2) years since that Application was dismissed and nothing much has gone on in the file. Though it is alleged that the court file was missing, there is no evidence to prove that allegation.

The Application is not opposed. On the 12th November, 2015 when it came up for hearing, there was no appearance on the part of the Defendants when the court dealt with the matter but Mr. Siro Advocate appeared immediately after I had heard the Application and he told the court that he was not aware of the matter. However, he did not file any reply and/or move the court in any way and I had to write this ruling without any input on the part of the Defendants.

In the case of **Mukisa Biscuits Manufacturing Company Vs West End Distributors E. A. 696**, it was held that the court has inherent powers to dismiss the suit for want of prosecution as it did in this case, but considering the circumstances of this case, I will give the Plaintiff a chance to prosecute the case and

make the following orders: -

a. The Notice of Motion dated 5th October, 2015 be and hereby allowed.

b. The order for dismissal of this suit made on the 25th February, 2015 be and is hereby set aside.

c. The suit be prosecuted within the next six (6) months from today the 10th December, 2015 failure to which it shall stand dismissed.

d. Costs of the Application be in the cause.

Dated and delivered at Nairobi this 10th day of December, 2015.

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L. NJUGUNA

JUDGE

In the presence of

..... *For the Plaintiff.*

..... *for the Respondent.*