



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL DIVISION

CIVIL CASE NO 1251 OF 2005

PATRICK KARIUKI MUIRURI..... PLAINTIFF

VERSUS

1. BARCLAYS BANK OF KENYA LIMITED

2. THE STANDARD LIMITED.....DEFENDANTS

R U L I N G

1. Both Defendants have applied by **notices of motion** respectively **dated 4th July 2013 and 2nd April 2013** for dismissal of the Plaintiff's suit for want of prosecution. The applications are under **Order 17, rule 2 (3)** of the **Civil Procedure Rules** (the **Rules**).

2. The grounds for the applications stated on the face thereof include –

- (i) That it is over one year since the Plaintiff took any step towards prosecution of the suit.
- (ii) That the delay is inexcusable and inordinate.
- (iii) That the Defendants should be relieved of the burden of the litigation as the Plaintiff has lost interest in the suit.

There are affidavits sworn in support of the applications which give a history of the litigation.

3. The Plaintiff has opposed the application by **replying affidavit sworn on 16th September 2013**. Grounds of opposition emerging therefrom include -

- (i) That whereas the law firm which had conduct of the matter previously for him misplaced his file in the course of its re-location to other offices, and hence the inaction by the said firm towards setting a hearing date, he has since appointed another firm of advocates and had already filed his statement and bundle of documents with the aim of getting the matter ready for trial by the time the present applications were filed.

(iii) That no prejudice will be suffered by the Defendants if the matter is heard on its merits.

4. I have considered the submissions of the learned counsels appearing. The Plaintiff's counsel relied on his written submissions filed on 20th February 2014. I have also perused the court record.

5. The delay is from 16th May 2012 when the Plaintiff filed his list of documents and witness statements to 3rd April 2013 when the 2nd Defendant's present application was filed. That is a delay of about eleven months. That does not meet the threshold of 12 months set out in Order 17, rule 2 (1) of the Rules. It may also be observed that prior to the Plaintiff filing his witness statements and documents on 16th May 2012 there had been orders made for all parties to comply with pre-trial requirements under Order 11 of the Rules. I note from the record that the 1st Defendant filed one witness statement on 3rd September 2013. The 2nd Defendant does not appear to have complied.

6. Both the Defendant's applications are premature and must be refused. They are dismissed with costs to the Plaintiff. It is so ordered.

DATED AT NAIROBI THIS 20TH DAY OF MARCH 2014

H P G WAWERU

JUDGE

DELIVERED THIS 21ST DAY OF MARCH 2014