



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NAKURU

CIVIL SUIT NO.226 OF 2000

JANE NYAMBURA RUMATHI PLAINTIFF

VERSUS

DAKIANGA ENTERPRISES LTD. DEFENDANT

RULING

A notice to show cause was sought from the plaintiff in this matter, as to why it should not be dismissed for want of prosecution.

The matter arises out of an accident which occurred in 1997 and was eventually filed in court on 27th April 2000.

Since then, the matter has never been heard, and has taken on a peculiar pace of its own life. On 11/01/2001, an application was made for the extension of summons, and the same was granted with directions that summons re-issue to the defendant. After the defendant entered appearance in November 2001 and a reply thereto filed; the matter only came back to life on 10/06/2003 when the plaintiff's counsel sought an adjournment so as to file a list of documents.

Thereafter the matter remained inactive until 27/1/2006 when a notice of change of advocates was filed and for the rest of that year, no significant activity took place until 05/3/2008 when an application seeking leave to amend the plaint was argued and ruling delivered on 05/06/2008.

Again the matter dozed off, and by May 2013, the defendant applied to the court to inquire from plaintiff why the matter ought not to be dismissed for want of prosecution. That is what gave birth to the present situation where a notice to show cause was issued to the plaintiff as to why the suit should not be dismissed.

The plaintiff, through his counsel Mr. Oluoch urged the court not to dismiss the matter and relied on an affidavit sworn by his counsel. One of the issues raised by Mr. Oluoch is that an application dated 26/07/2006 was heard, but no date or ruling has been delivered.

Mr. Nyambane on behalf of the defendant, pointed out that this is factually incorrect. I agree. Indeed the court record shows that although ruling was set for 29/05/2008 at 2.30 p.m., the same was not delivered and the court issued a notice and ruling was delivered on 05/6/2008 in the absence of parties. Such assertion by the plaintiff's counsel only means that he has not perused the court record to establish the true position in this matter. A copy of the ruling (both handwritten and typed) is in this court file.

If as counsel claims, his firm has made several attempts to follow up on the fate of the application without success, then not a single document of correspondence is annexed to support those claimed attempts. Surely six years after the ruling ought to have been given and counsel did not write even a single letter to either the Deputy Registrar or the Judge, inquiring what became of the application argued. That is so improbable, and with greatest respect, only demonstrates lack of due diligence.

Of course there is a matter in **Nrb HCCC No.278 of 2006 JANE RUMATHI V ZAKAYO MWANGI**, arising out of the same cause of action as this one. Counsel for the plaintiff avers that he is awaiting the outcome of that matter before he can prosecute this one, and in fact urges this court to order for transfer of this matter to Nairobi so as to have it consolidated with the aforementioned one. The only document annexed in support of this averment is the plaint. It is not stated:

- a. What stage the matter has reached.
- b. That there exist orders staying this suit while the other one is determined.
- c. That the Nairobi suit is being pursued as a test suit.
- d. Why would the plaintiff want a suit which was filed six years after his, to be given priority, if anything, the converse should apply.

From the foregoing, the upshot is that, the inactivity in this matter is inexcusable, and the reasons given do not justify prolonging the life of this matter to its 15th year in Nakuru High Court. Consequently the suit is dismissed for want of prosecution.

Costs of the suit are awarded to the defendant.

Delivered and dated this 16th day of May, 2014 at Nakuru.

H.A. OMONDI

JUDGE