



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

CIVIL CASE NO. 182 OF 2013

NYANDARUA PROGRESSIVE AGENCIES LTD.....
PLAINTIFF/RESPONDENT

VERSUS

PAUL KURIA WAINAINADEFENDANT/APPLICANT

R U L I N G

1. This is the defendant's Notice of Motion dated **30th August, 2012** seeking an order of this court to dismiss the suit for want of prosecution and costs thereof. The Application is expressed to be brought under **Order 17 rule 2(2) (3)** of the Civil Procedure Rules and **section 3A** of the Civil Procedure Act Cap 2010.
2. The application is anchored on a Supporting Affidavit deposed to by the counsel for the defendant Lawrence Macharia Karanja sworn on **30th August, 2012** on the grounds that the suit has been pending for six months and the plaintiff has not taken any steps to prosecute the same since a ruling was delivered for a similar suit HCCC No. 73 Of 2006 on **29th February, 2012**. Therefore the respondent is guilty of laches and inordinate delay.
3. An affidavit of service was sworn by Julius Kamotho Njaga, a process server of this court, on **2nd July, 2013** and **18th February, 2014** in which he deposes that he served the plaintiff's counsel Kimatta & Co Advocates who acknowledged service on **25th February, 2013** and **20th December, 2013**. The plaintiff did not respond to the application nor appear despite service.
4. I have perused the court record and heard submissions by counsel for the defendant. I take the following views on the matter.
5. After this suit was filed, the defendant/applicant filed a defence and notice of preliminary objection on **24th July, 2007**. He also filed a chamber summons dated **4th February, 2009** to strike out the suit with costs. Both applications were heard and a ruling delivered on **27th January, 2012**. This suit was stayed pending the hearing and determination of HCCC No. 73 of 2006 which related to the same subject matter and involved the same parties. On **29th February, 2012** HCCC No. 73 of 2006 was dismissed for want of prosecution. Since then this matter has never been set down for hearing. Having been served with this application together with the hearing notice and having failed to attend, it is evident that the plaintiff/respondent is no longer interested in prosecuting this suit. It is now close to two years since HCCC No. 73 of 2006 was dismissed and there is no reason why this suit should remain pending.

6. It is true to say that the court should be slow to dismiss a suit for want of prosecution if the suit can be heard without any further delay, if the defendant will not suffer any hardship and if there has been no flagrant and culpable inactivity.

See **Victory Construction Company vs. A. N. Duggan (1962) E.A. 697.** But in this case where the Plaintiff has taken no action to move the court, I am persuaded that the plaintiff has lost interest in the suit.

8. I therefore find the Notice of Motion dated **30th August, 2012** merited and dismiss the plaintiff's suit for want of prosecution with costs.

Dated, signed and delivered at Nakuru this 20th day of June 2014.

L N WAITHAKA

JUDGE

PRESENT

Mr Njuguna for the plaintiff

N/A for the defendant

Emmanuel Maelo : Court Clerk

L N WAITHAKA

JUDGE